Chapter IV

EXPORT - IMPORT POLICY OF GOVT. OF INDIA

Trade policy governs exports from and imports into a country. It is one of the various policy instruments used by a country to attain goals of economic development. This policy is thus, formulated keeping in view, the national priorities for economic development and the international commitments made by the country. It is essential that the entrepreneurs and the export managers understand the trade policy as it provides the vital inputs for the formulation of their business growth strategies. In India, the trade policy i.e., export-import policy is formulated by the Ministry of Commerce, Government of India in terms of section 5 of the Foreign Trade (Development and Regulation) Act, 1992. The present Export-Import Policy was announced on 31.3.97 for a period of 5 years with effect from 1.4.97 to 31.3.2002. This policy has been further amended on 31.3.2001. It covers both the trade in merchandise and services. The present chapter explains the legal framework affecting foreign trade of India particularly with reference to the Export – Import Policy : 1997-2002, as amended up to 31.3.2001. It also discusses the preferential trading arrangements affecting exports and imports of India.

4.1 Legal framework for foreign trade of India


The main objective of the Foreign Trade (Development and Regulation) Act is to provide for the development and regulation of foreign trade by facilitating imports into, and exports from India. This Act has replaced the earlier law namely, the Imports and Exports (Control) Act 1947. A comparison of the provisions of the two Acts makes it very clear that there is a shift in the focus
of the law from control of development of foreign trade. This shift in the focus
is the outcome of the emphasis on liberalisation and globalisation as a part of
the process of economic reforms initiated in India since June 1991.

The application of the provisions of the Foreign Trade (Development &
Regulation) Act 1992 has been exempted for certain trade transactions vide
Foreign Trade (Exemption from application of Rules in certain cases) Order
1993.2

4.2 Export-Import policy: 1997-2002
The Export-Import Policy: 1997-2002 deals with both the export and import of
merchandise and services. A distinguishing feature of this policy is that it has
accorded a status of exporter to the business firm exporting services with
effect from 1.4.1999. Such business firms are known as Service Providers.

The main policy provisions are given in the policy document entitled "Export-
Import Policy 1997-2002". An exporter will have to refer to the Handbook of
Procedures Volume – I to know the procedures, the agencies and the
documentation required to take advantage of a certain provision of the policy.
There is a para-by-para correspondence between the policy and the
Handbook of Procedures Volume – I. Thus, if an exporter finds that para 6.2
of the policy is relevant for his business enterprise then he should also refer to
the corresponding para of the Handbook of Procedures Volume – I to know
precisely what is to be done to take advantage of the policy provision. The
Handbook of Procedures Volume – II provides a very vital information as
regards the standard input-output norms in regard to items of export from
India. Based on these norms, exporters are provided the facility to make
duty-free import of inputs required for manufacture of export products under
the Duty Exemption Scheme. The policy regarding import or export of a
specific item is given in the document entitled "ITC (HS) Classifications of
Export-Import Items". In this document item wise import policy is given in
Schedule – 1 and item wise export policy is given in Schedule – 2.
In addition to these policy documents, an export enterprise should also refer to the various policy circulars and trade notices issued by various regulatory authorities dealing with different aspects of foreign trade. One can refer to these notices either by visiting the relevant web site of the authority concerned or by referring to various trade magazines, which circulate them.³

4.2.1 Objectives of the Export-Import policy : 1997-2002
The main focus of the export-import policy 1997-2002 is to carry forward the process of liberalisation and globalization set in motion by the process of economic reforms initiated since June, 1991. These reforms have aimed at restructuring the Indian economy to increase the productivity and competitiveness of foreign trade enterprises in order to achieve a higher rate of growth in exports. The main objective of the present policy is to allow foreign trade to grow in an environment of liberalization from licensing procedures, quantitative restrictions, undue political controls and complex documentation procedures. Specifically, main objectives of the present policy are as follows:

- To accelerate the country’s transition to the global economy with a view to derive maximum benefits from expanding global market opportunities;
- To stimulate sustained economic growth by providing access to essential raw materials, intermediates, components, consumables and capital goods required for augmenting production;
- To enhance the technological strength and efficiency of Indian agriculture, industry and services, thereby improving their competitive strength while generating new employment opportunities and encourage the attainment of internationally accepted standards of quality; and
- To provide consumers with good quality products at reasonable prices.³
4.3 Main provisions of the export-import policy: 1997-2002

The main provisions of the Export-Import Policy are discussed in detail as below,

4.3.1 Stability of policy

The Export-Import Policy 1997-2002 remained valid for a period of five years with effect from 1.4.1997 to 31.3.2002. The duration of the policy also coincides with the duration of the Ninth Five Year Plan of economic development of the country. The linking of duration of the policy with the duration of Five Year Plan is very significant in view of the shift in the strategy of development of the country from import substitution led growth to export led growth. This change in the strategy implies that foreign trade shall now be an integral element of the strategy for economic development of the country. The long duration (of the policy) provides the much needed stability to the policy especially because the present policy is a continuation of the earlier policy. This facilitates better planning for exports, production, marketing and so on.

4.3.2 Liberalised exports and imports

The export-import policy as amended on 31.3.2001, provides for substantial liberalisation of imports and exports. However, the policy does provide for restrictions on imports and exports.

As far as exports are concerned, the export policy with regard to the export of various items can be classified into four categories namely, (a) Prohibited (b) Restricted (C) State Trading Enterprises and (d) Free with terms and conditions. The items prohibited for exports cannot be exported. The items restricted for exports are allowed for export against valid export licence. The export licence is granted against confirmed export order only. Items under State Trading Enterprises can be exported by the designated agencies of the Central Government or State Government, for example, STC, Indian Oil Corporation etc. Besides, there are certain free items which are allowed for export without any licence but their export is subject to the fulfilment of certain terms and conditions of EXIM policy. These relate to minimum export price,
registration with the Export Promotion Council, registration of export contracts etc. The details of individual items of export subject to any one of these policies is given in Schedule 2 (Export Policy) as given in the ITC (HS) Classification of Export-Import Items. An item can be exported without any restriction if it is not covered by any one of these four categories.\(^3\)

The import policy has also divided the various items of import into four categories namely, (a) Prohibited (b) Restricted (c) Canalised and (d) State Trading Enterprises.

The prohibited items cannot be imported into India. Such items include beef in any form and products containing beef in any form, animal rennet, ivory, etc. The restricted items can be imported only against the import licence. The canalised items of import are allowed for import through the designated agencies of the Government of India. It needs to be emphasised here that the Government of India had committed in terms of its agreement with US Government to remove licensing restrictions on 1429 items in a phased manner as explained in Chapter 2 (para 2.5). This list also included items which were allowed for import against Special Import Licence. Of the 1429 items, 714 items were allowed for import without licence w.e.f. 1.4.2000 and the remaining 715 items were removed from the licencing restrictions w.e.f. 1.4.2001, when modifications to the Export-Import Policy 1997-2002 were announced on 31.3.2001. However, import of certain items which were earlier allowed against the surrender of Special Import Licence and were not included in the list of items removed from the licensing list vide notification No. 2 (RE-2001) dated 31.3.2001 shall remain restricted for import against Import Licence under negative list. Examples of such items are plasticwares, safety fuses, some of the drugs and pharmaceuticals, etc. Though licensing restrictions also called quantitative restrictions (QRs) have been removed yet the import of these items is allowed subject to other non licensing restrictions, such as compliance with Indian Quality Standards, packaging regulations, import permits etc. The details of the response of Government of India to the removal of QRs is given as an annexure to this chapter.
The import of certain items has been permitted by the State Trading Enterprises which shall make imports solely in accordance with commercial considerations including price, quality, availability, marketability, transportation, etc. Such items include wheat, rice, urea, petrol, diesel etc. The import policy of individual items is given in Schedule 1 (Import Policy) in ITC (HS) Classification of Export-Import Items.

If a certain item is restricted for export or its export is subject to specified terms and conditions, then the exporter should take into account their impact on the delivery schedule before committing the time for delivery of goods to the foreign buyer. It is important to remember that exporter is required to obtain export licence every time export of restricted item is to be made. Similarly, for export of items covered by Appendix – 1 to Schedule – 2, exporter is required to fulfil the terms and conditions every time export of that item is to be made.

4.3.3 Import of capital goods
The present Export-Import Policy 1997-2002 has liberalised the import of capital goods required for the manufacture of various goods and provision of services. A business firm is allowed to import new capital goods without any licence against payment of applicable import tariffs. But the import of second hand capital goods is allowed, provided, such second hand capital goods are not more than 10 years old. The second hand capital goods shall not be transferred or sold or otherwise disposed of within a period of two years from the date of import except with the prior permission of the licensing authority.

4.3.4 Export Promotion Capital Goods Scheme (EPGC)
As explained above, an importer of capital goods has to pay the applicable import duty. If an exporter imports capital goods against payment of import duty, then the cost of capital goods will certainly increase by the amount of import duty and it would result in the increase in the cost of production. As a consequence, the cost competitiveness of the export products would be adversely affected. Though it is the primary responsibility of the exporter to ensure cost effectiveness yet the Government of India in the Export Import
Policy 1997 – 2002 has introduced Export Promotion Capital Goods Scheme to promote cost competitiveness of India’s exports.

Under this scheme, an exporter is allowed to import new capital goods against payment of import duty of 5 per cent. The term ‘capital goods’ includes computer software systems and jigs, dies fixtures, moulds and spares. Import of second hand capital goods is not allowed under this scheme.

If an exporter desires to take advantage of this facility, he has to apply for the grant of licence under this scheme known as the EPCG licence. The import of jigs, dies, moulds and spares is allowed up to 100 per cent of the CIF value of the EPCG Licence.

Main Features of the EPCG Scheme

a) Eligibility for Import
Under this scheme, manufacturer exporters, merchant exporters tied to supporting manufacturer(s) and service providers are eligible to import capital goods. The capital goods imported by the licence holder shall be installed at the factory of the licence holder or the supporting manufacturer(s). The import of capital goods is allowed subject to the actual user condition only till the export obligation stipulated under this scheme is completed.

b) Adjustment in the Value of EPCG Licence
The value of an EPCG licence can be adjusted plus / minus 10 per cent of the CIF value of the licence.

c) Amount of Export Obligation
The EPCG Licence holder is required to fulfill the export obligation as a condition to avail of the facility to import the capital goods against the payment of 5 per cent import duty. The amount of export obligation shall be as follows:

i. Export of goods of the FOB value equal to 5 times the CIF value of capital goods or
ii. Earn Net Foreign Exchange equal to 4 times the CIF value of capital goods.

Net Foreign Exchange earned is defined as FOB value of exports minus value of all the import licences including the value of 2.5 times the Duty Entitlement Pass Book Credit earned / granted and the value of duty free gold / silver / platinum taken from nominated agency. However, the value of freely transferable special import licences, EPCG Licences and the value of licences surrendered during their validity is not deducted.

**d) Period for the Discharge of Export Obligation**

Under this scheme, the licence holder is required to discharge the export obligation within a period of 8 years from the date of issuance of licence. The exporter is informed of the year-wise break-up of the export obligation as given in the EXIM Policy. It can be explained in a proper manner in the form of block of years and proportion of total export obligation. The first block of year is for first and second year for which the export obligation is nil. The second block is for the third and forth year for which proportion of total export obligation is 15 per cent. The third block is for the fifth and sixth year for which the proportion of total export obligation is 35 per cent. And the forth block is for the years seventh and eighth for which the proportion of the total export obligation is 50 per cent. The export obligation of a particular block of years may be set off by the excess exports made in the preceding block of two years.

**e) Default in Discharge of Export Obligation**

In case the EPCG Licence Holder fails to discharge the export obligation for any particular block of years in terms of the above proportions, (except where the time has been extended by the licensing authority) such licence holder shall within 3 months from the expiry of the said block or year, pay duties of customs plus 24 per cent interest of an amount equal to that proportion of the duty leviable on the goods which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation.
If the licence holder fails to discharge even a minimum of 25 per cent of the export obligation prescribed for any particular block of two years for two consecutive blocks under the EPCG scheme then he shall be liable to pay forthwith, the whole of duties of customs leviable on the goods imported plus 24 per cent interest leviable on the goods imported except in such cases where the time period has been extended by the competent authority.

f) **Fulfillment of Export Obligation**

The following conditions shall apply to the fulfillment of the export obligation. The export obligation shall be fulfilled by the export of goods manufactured or produced by the use of the capital goods imported under the scheme. However, if the exporter is processing further to add value on the goods so manufactured, the export obligation shall stand enhanced by 50 per cent.

The exports shall be direct exports in the name of the EPCG licence holder. However, the export through third party (s) is also allowed provided the name of the EPCG licence holder is also indicated on the shipping bill i.e. the document required to obtain customs clearance of export shipment. If a merchant exporter is the importer, the name of the supporting manufacturer shall also be indicated on the shipping bill.

Export proceeds shall be realised in freely convertible currency.

Exports shall be physical exports. However, deemed exports as specified in policy shall also be counted towards fulfillment of export obligation, but the EPCG licence holder shall not be entitled to claim any benefit under this policy in respect of such deemed exports.

The exports obligation shall be, in addition to any other export obligation undertaken by the importer, except the export obligation for the same product under the duty exemption / remission scheme as specified in paragraph (6) below. The export obligation shall be over and above the average level of exports achieved by him the preceding three licensing years.
Where the manufacturer exporter has obtained licences for the manufacture of the same export product both under EPCG and under the Duty Exemption / Remission Scheme, the physical exports made under the Duty Exemption / Remission Scheme including the Duty Entitlement Pass Book Scheme / Duty Free Replenishment Certificate shall also be counted towards the discharge of the export obligation under this scheme.

In the case of exports of computer software, agriculture, animal husbandry, floriculture, horticulture and poultry, the EPCG licence holder shall not be required to maintain the average level of exports achieved by him the preceding three licensing years.

\textit{g) Import of Components and Goods in Un-assembled Condition}

An exporter may apply for grant of licence under the EPCG Scheme for the import of capital goods in the un-assembled condition to be assembled into capital good.

\textit{h) Indigenous Sourcing of Capital Goods}

The EPCG Licence holder may source the capital goods from a domestic manufacturer instead of importing them. In such a situation, if there is a firm contract between the parties for such sourcing, the domestic manufacturer may apply under the scheme for the import of components required for the manufacture of the said capital goods, at a rate of duty at which EPCG licence for capital goods is issued. In such cases, export obligation relating to the EPCG Licence shall be determined with reference to the CIF value of the licence actually utilised.

\textit{i) Replacement of Capital Goods}

The capital goods is imported under the scheme and found defective or otherwise unfit for use may be re-exported and capital goods in replacement thereof may be imported under the scheme.
j) Validity of the EPCG Licence

The EPCG licence is valid for a period of 24 months, reckoned from the date of shipment / dispatch of the goods from the supplying country and not from the date of issue of the licence or the arrival of the goods at an Indian port. 3

4.3.5 Duty exemption scheme

The Export-Import Policy has introduced Duty Exemption / Remission Scheme, in addition to the EPCG Scheme, to promote the competitiveness of India’s exports.

The basic aim of the Duty Exemption Scheme is to enable the exporters to import duty Free inputs required for the manufacture of products for export. The Duty Remission Scheme provides for, a) the post export replenishment of the inputs used in the export product in the form of Duty Free Replenishment Certificate and, b) remission of the duties on the inputs used in the export product under the Duty Entitlement Passbook Scheme. 6

4.3.5(a) Main features of duty exemption scheme

Under the Duty Exemption Scheme, an exporter is allowed to make duty free import of inputs, which are physically used in the export product at the pre-shipment stage. The Handbook of Procedures (Volume II) gives details of the inputs used in the export products defined as standard input-output norms. The quantity of inputs can be increased by the amount of normal wastage in the course of production. Besides, fuel, oil, energy catalysts etc. which are consumed in the course of their use to obtain export product, may also be allowed under the scheme.

‘Duty Free’ import of inputs implies that the import of inputs under this scheme shall be allowed without payment of Basic Custom Duty, Surcharge, Additional Customs Duty, Anti Dumping Duty and Safeguard Duty, if any.

An exporter desirous of availing of this facility shall apply to the competent licensing authority for the grant of the licence called ‘Advance Licence’.
Advance licence can be issued for the physical exports, intermediate supplies and deemed exports etc.

- **Advance Licence against Physical Exports**
  
  Advance licence against physical exports can be issued under the following two conditions:
  
  a. against an export order and
  
  b. on the basis of annual requirement in respect of export product.

  Advance licences against physical exports are issued to the Manufacturer - exporters and Merchant - exporters categories of the exporters having tie-up with a supporting manufacturers.

  This licence can be issued in all cases irrespective of whether the standard input-output norms have been determined or not. In cases where input-output norms have not been fixed, the licence is issued on the basis of adhoc quantities and the norms are finally fixed.¹

- **Advance licence on the basis of annual requirement**
  
  The following categories of exporters are eligible for the grant of advance licence for meeting annual requirement of inputs defined as standard inputs under the standard input-output norms:

  Manufacturer exporter with export performance of Rs. 1 crore in the preceding year and registered with the excise authorities, except for products which are not excisable and for which no such registration is required.

  Export House, Trading House, Star Trading House and Super Star Trading House holding the certificate as merchant exporter and agree to the endorsement of the name of the supporting manufacturer(s) on the relevant advance licence.

  The value of the advance licence for annual requirement shall be upto 200 per cent of the average FOB value of export in the preceding licensing year.°
• **Description of an Advance Licence**

Under the Duty Exemption Scheme, the licensing authority issues an advance licence along with the Duty Exemption Entitlement Certificate (DEEC) Book. An advance licence and the relevant DEEC Book specify the following details:

- **a.** names and description of the items to imported and exported / supplied;
- **b.** the quantity of each item to be imported;
- **c.** the aggregate CIF value of imports; and
- **d.** the FOB/FOR value and quantity of exports / supplies.

The imports and exports under the advance licence are required to be made from the specified port (airport/sea port/ inland container depot). Thus, an exporter should register the licence with the port specified in the licence.

• **Transfer of advance licence**

The advance licence, whether issued against physical exports or on the basis of annual requirements, cannot be transferred even after completion of the export obligation. Even the materials imported under such licences cannot be transferred. However, the competent licensing authority may permit the transfer of the licence or the materials imported thereunder.

• **Export obligation under the advance licence**

The export obligation under the advance licence is determined on the basis of value addition.

The advance licence is issued with a positive value addition. The term ‘Value Addition’ has been defined as follows under the Export-Import Policy:

\[ \text{Value Addition} = \frac{(A-B)}{B} \times 100 \]

‘A’ stands for the FOB value of the export realised / FOR value of the supply received.
'B' stands for the CIF value of the imported inputs covered by the licence, plus any other imported materials used on which the benefit of duty draw back is being claimed.

(The duty drawback refers to the refund of customs and central excise duties in respect of the export product. This has been discussed in chapter VI)

- **Validity of advance licence**
  Advance licence is valid for a period of 18 months. Its validity may be extended by another six months depending on the merits of the case by the competent licensing authority. However, the validity period is 12 months in the case of advance licence issued on the basis of the annual requirement. The period of validity is determined with reference to the date of shipment / dispatch of the goods from the supplying country and not from the date of the licence or the date of arrival of the goods in India.

- **Advance licence for intermediate supply**
  Advance licence may be issued for intermediate supply to a manufacturer – exporter for import of inputs required for the manufacture of goods to be supplied to the ultimate exporter / deemed exporter holding another Advance licence.

- **Advance licence for deemed exports**
  Advance Licence is issued to the main contractor for import of inputs required for the manufacture of the goods supplied in the following cases (treated as deemed exports):

  a) Supply of goods to the Export Oriented Units / units located in the export processing zones / software technology parks / electronic hardware technology parks / special economic zones;
  b) Supply of capital goods to an EPCG licence holder.
  c) Supply of goods to project financed by multilateral or bilateral agencies / Funds as notified by the Department of Economic Affairs, Ministry of
Finance under the international competitive bidding as required by the procedures of the notified agencies / funds.

d) Supply of prescribed capital goods and other goods to the fertiliser plants.

e) Supply of goods to projects involving an investment of Rs. 100 crores or more in the infrastructure sector of power and refineries, coal, hydrocarbon, rail, road, port, civil aviation, bridges and such other projects.

f) Such licences are also issued in respect of supplies made to the UN organisations or under the Aid Programme of UN or other multilateral agencies and paid for in foreign exchange.

- **Period of export obligation**

  The exporter should fulfill the export obligation under advance licence within a period of 18 months from the date of the licence. This period can be extended by six months subject to the payment of composition fee of 1 per cent of the unfulfilled portion of the FOB value of the export obligation in relation to the CIF value of imports made for which extension is being sought. This extension can be further increased for a period of another 6 months from the date of expiry of the first extension subject to further payment of composition fee of 5 per cent of the unfulfilled portion of the FOB value of export obligation in relation to the CIF value of the imports made.

  As far as supplies under the advance licence for Deemed exports / Advance licence for the projects / turn key projects in India / abroad are concerned, the export obligation must be fulfilled within the contracted duration of the project / turnkey project.

  The accountability for imports and exports is restricted in relation to the individual categories of advance licence. The export obligation may also be fulfilled by exporting to the party other than the party, which had initially placed the order on the basis of which the advance licence was issued.
4.3.5 (b) Duty Remission Scheme

This scheme offers the facility for duty free import of the inputs at the post export stage under two different options:

I. Duty Free Replenishment Certificate, and

II. Duty Entitlement Pass Book Scheme.

I. Duty Free Replenishment Certificate

The Duty Free Replenishment Certificate (DFRC) is issued for the import of inputs used in the manufacture of export product. The main features of the DFRC are as follows:

- The import of inputs is allowed without payment of basic custom duty, surcharge, and special additional duty. However, the import shall be subject to the payment of additional custom duty equal to the central excise duty applicable to that product.

- DFRC is issued in respect of those export products for which Standard Input Output norms have been determined by the competent licensing authority.

- The DFRC is issued for the import of inputs, as defined in (ii) above, having the same quality, technical characteristics and specifications as used in the end product exported by the exporter.

- The DFRC is issued for period of validity of 18 months.

- The materials imported against DFRC are freely transferable.

- The DFRC is subject to the value addition of a minimum 33 per cent

- The application for the grant of DFRC can be filed within a period of 90 days from the date of realisation of the export proceeds. This time period is 180 days in the case of shipments covered under letter of credit.
The DFRC is issued with single port of registration, that is, the port from where the exports have been effected.

**II. Duty Entitlement Pass Book Scheme**

The objective of Duty Entitlement Passbook (DEPB) scheme is to neutralise the incidence of the basic customs duty and surcharge thereof on the import content of the export product. This facility is provided by way of grant of import duty credit against the export product. The import duty credit under the scheme is calculated by taking into consideration the following factors:

a) deemed import content of the said export product as per standard input-output norms and the import duties payable on such deemed import content.

b) value addition achieved by export of such product.\(^1\)

The main features of the DEPB scheme are as follows:

- An exporter can import raw materials, intermediates, components, parts, packaging materials etc. except those items mentioned as restricted items for imports in ITC (HS) classifications of export and import items.

- DEPB benefit is available on post export basis only. The rates of import duty credit under DEPB scheme are given in the Hand Book of Procedures Vol. I (Appendix 28A). The DEPB on post export basis is granted only after the export proceeds have been realised by the exporter.

- Merchant exporter and manufacturer exporter are eligible for DEPB on the post export basis.

- The import of inputs is allowed without payment of basic customs duty and surcharge thereof as well as additional duty of customs, against the import duty credit granted under this scheme. The holder of DEPB has the option to pay additional customs duty, if any, in cash as well.
- Third party exports are also admissible for grant of credit under DEPB.

- The DEPB shall be valid for a period of 12 months from the date of its issuance.

- The goods already imported / shipped / arrived in advance but not cleared from customs may also be cleared against the DEPB issued subsequently.

- The DEPB on the post export basis and / or the items imported against it are freely transferable. The transfer of DEPB shall however, be for import at the port specified in the DEPB which shall be the port from where exports have been made.

- An exporter can file application for the grant of import duty credit under DEPB scheme within a period of 180 days from the date of exports or within 90 days from the date of realisation of export proceeds, whichever is later. The number of days are calculated from the last date of realisation / exports, in respect of shipments for which the claim is filed.\(^6\)

4.3.6 Import of replacement of goods

An exporter can export without any licence the goods or parts thereof which had been imported earlier and are now found to be defective or otherwise unfit for use or which have been damaged after import. The exporter may import without licence the goods representing their replacement supplied free of charge by the foreign suppliers or imported against a marine insurance or marine-cum-erection insurance claim settled by an insurance company. Such goods shall be allowed clearance by the customs authorities without an import licence provided that:

a. The shipment of replacement goods is made within 24 months from the date of clearance of the previously imported goods through the
Customs or within the guarantee period in the case of machines or parts thereof where such period is more than 24 months and

b. No remittance shall be allowed except for payment of insurance and freight charges where the replacement of goods by foreign suppliers is subject to payment of insurance and / or freight by the importer and documentary evidence to this effect is produced at the time of making the remittance.

4.3.7 Export and Import of Free Trade Samples

(a) Import of free trade samples

Under the Export-Import Policy, import of bonafide trade samples is allowed without any limit. However, the import of samples of items mentioned as restricted in the ITC (HS) Classification of Import-Export Items is allowed without licence up to a value limit of CIF value of Rs. 100,000 in one consignment. Import licence would be required in case the value of trade samples exceeds Rs. 100,000. This stipulation is not applicable in the case of vegetable seeds, bees and new drugs.

The samples of tea can be imported for CIF value not exceeding Rs. 2000 without any import licence by any person connected with the tea industry.

(b) Export of free trade samples

Under the Export-Import Policy, export of bonafide trade and technical samples bearing indelible marking "samples, not for sale" is allowed freely without any limit of value and quantity. However, in cases where the indelible marking is not available, the export of samples is allowed up to the value limit of USD 10,000 per consignment. Besides, the exporter is also given the facility to export free trade samples up to USD 5000 or 1 per cent of the preceding year’s exports, whichever is higher.

4.3.8 Brand promotion and quality

It is the policy of the Government of India to promote the export of products which meet internationally accepted standards of quality and to promote the export of branded products. The Export-Import Policy: 1997-2002 supports
and assists the trade and industry to launch a nation-wide programme on
quality awareness and to promote the concept of total quality management
with special focus for the products manufactured by the small scale and
handicraft sectors. The Government also provides assistance for the
modernisation and upgradation of test houses and laboratories in order to
bring them at par with international standards.

- Double weightage on FOB value of exports or NFE on exports made by
  units having ISO 9000 (series) or IS/ISO 9000 (series) or ISO 14000
  (series) certification for the purpose of grant of status of Export House,
  Trading House, Star Trading House or Super Star Trading House.
- Green Card Facility: The exporters of the categories mentioned above
  will also be eligible for the benefit of green card facility which would
  enable them to obtain green card from the Director General of Foreign
  Trade. The green card ensures speedy clearance of import / export
  consignments.

4.3.9 Green card facility
Under the Export-Import Policy, the following categories of exporters are
given the facility of Green Card:

a) all export firms recognised as Export House, Trading House, Star
   Trading House or Super Star Trading House.

b) Manufacturer exporters exporting more than 50 per cent of their
   production, subject to a minimum turnover of Rs. 1 crore in preceding
   year.

c) Service providers rendering services in free foreign exchange for more
   than 50 per cent of their services turnover, subject to a minimum value
   of Rs. 35 lakhs in free foreign exchange in the preceding year,

d) Exporters of products with quality trade marks.

e) Exporters who have acquired certification for their quality control
   systems under ISO 9000 or its equivalent standards or for environment
   management assurance system under ISO 14000 standards or
equivalent standard.
Benefits of green card
The exporters with green card facility are entitled to the various benefits such as, a) Automatic grant of import licences, b) Automatic custom clearance of exports, c) Automatic customs clearance for imports related to exports and d) other facilities as may be prescribed from time to time.

4.3.10 Replacement of defective goods
An exporter is allowed to import back the goods or parts thereof for replacement if the importer has made complaint about their being found defective or damaged or otherwise unfit for use. The exporter is allowed to replace such defective / damaged goods free of charge provided the replacement goods are not mentioned as restricted items for export in ITC (HS) classifications of exports and imports. Such imports and exports involving a replacement of defective goods shall be allowed clearance by the custom authorities.\(^5\)

4.3.11 Export of goods after repairs
An exporter is allowed to import the goods for repair if the importer finds them defective / damaged or otherwise unfit for use. Later, the exporter can re-export them to the importer after carrying out the necessary repairs. Such goods shall be allowed clearance without any licence in accordance with the relevant custom notifications as in force from time to time.

4.3.12 Export of imported goods
An exporter may import the goods from one country and export them to another country in the same or substantially the same form without a licence provided the item to be imported or exported is not mentioned as restricted item for import or export in the ITC (HS) classification of export-import items. However, the items mentioned as restricted items for import or export may be imported under custom bond to be exported to another country in the same or substantially the same form against payment in freely convertible currency without a licence.
4.3.13 Private bonded warehouses for exports
The specified categories of exporters (status holder etc.) are allowed to set up the private bonded warehouse exclusively for the purpose of exports in the domestic tariff area. Such warehouses shall be entitled to procure goods from the domestic manufacturers without payment of duty. The supplies made by the domestic suppliers to the notified warehouses shall be treated as physical exports provided the payments for the same are made in free foreign exchange.

4.3.14 Private bonded warehouses for imports
The Export-Import Policy 1997-2002 as modified on April 13, 1998 provides for the establishment of private bonded houses for imports. The purpose of such warehouses is to ensure easy and timely availability of raw materials to the exporters specially small scale industry units which may find it difficult to import directly smaller quantities at internationally competitive prices. Private / public bonded warehouses may be set up in the Domestic Tariff Area as per the terms and conditions notified in this regard by Department of Revenue, Ministry of Finance, Government of India.

Any person may import goods except prohibited items, arms and ammunition and hazardous wastes and chemicals and warehouse them in such private / public bonded warehouses. Such goods may be cleared for home consumption in accordance with the provisions of this Policy and against Licence, wherever required. Custom duty as applicable is paid at the time of clearance of such goods. If such goods are not cleared for home consumption within a period of one year or such extended period as the custom authorities may permit, the importer of such goods shall re-export the goods.6

4.4 Export of services
The Export-Import Policy: 1997-2002, as modified on 31.3.1999, recognised the export of services. Accordingly, the business firms providing them are treated as Service Providers. The following categories of business firms providing services are defined as Service Providers:
a. supply of a ‘services’ from India to any other country;
b. supply of a ‘services’ from India to the service consumer of any other
country in India;
c. supply of a ‘services’ from India through commercial or physical
presence in the territory of any other country.

Here it is important to emphasis that the service should be from among the
tradable services covered under the General Agreement on Trade in
Services. This agreement has identified 161 tradable services. The important
among these services are as follows:

a. Business services
b. Communication services
c. Construction and related engineering services
d. Distribution services
e. Educational services
f. Environmental management services
g. Financial services
h. Health related and social services
i. Tourism and travel related services
j. Recreational services
k. Transport services

4.4.1 Facilities for the exporters of services

The exporters of services are entitled to all those facilities that are available
against physical exports. The details of these facilities are explained as
follows:

I. The service providers are eligible for the facility of EPCG scheme to
import capital goods at concessional rate of import duty of 5 per cent
II. The service providers can also establish a unit as EOU or setup the
unit in EPZs / SEZs / STPs and other by enjoy all the benefits available
to similar units in these zones.
III. The service providers are also allowed to import drawings, designs,
inegrated circuits and layout designs, software in the diskettes, CDs
related to their line of services without obtaining a license as a part of their passenger baggage.

IV. The service providers can also imports restricted items required by them for providing services including office and other equipments required for their own professional use for a maximum amount equal to 10 per cent of the foreign exchange earned by them during the preceding licensing year.

V. The service providers can also seek recognition as service export house, international service export house, international star service export house and international super star service export house. The recognition of service exporters can be obtained either on the basis of gross foreign earnings or on the basis of net foreign exchange earnings at the option of the service exporter.  

4.5 Imports under Indo-US memorandum of understanding

In India, the import of specified capital goods, raw materials, component, etc. from the United States of America is subject to US Export Control Regulations. US suppliers of such items are required to obtain an export licence based on the import certificate furnished by the Indian importer to the US supplier. This certificate is issued by the following designated Import Certificate Issuing Authorities (ICIA) in India:

I. The Department of Electronics, for import of computer and computer based systems;

II. The Department of Industrial Policy and Promotion, Technical Support Wing (TSW), for organised sector units registered under it, except for import of computers and computer based systems;

III. The Ministry of Defence, for defence related items;

IV. The Director General of Foreign Trade for small scale industries and entities not covered above as well as on behalf of any of the above;

V. The Embassy of India, Washington, DC, on behalf of any of the above.

The request for the issue of this import certificate should be made in the prescribed form as given in appendix – 7 to the Handbook of Procedures.
This import certificate is however, not a substitute for an import licence in respect of the items mentioned as restricted in ITC (HS) Classifications of Export – Import Items and an import licence should be secured, if required for such items under the policy.¹

4.6 Preferential trading arrangement and India’s exports

Exports from India receive preferential tariff treatment in various importing countries under the following preferential trading arrangements:

1. Generalised System of Preferences
2. Global system of Trade Preferences
3. Bangkok Agreement
4. SAARC Preferential Trading Arrangements
5. Indo-Sri Lanka Free Trading Agreement

The Generalised System of Preferences is a system under which Indian goods receive preferential tariff treatment upon import into developed markets such as Member States of European Union, USA, Japan, New Zealand, Australia, Canada, Switzerland, Norway, Russia, etc. The GSP schemes of various countries are notified by them from time to time. These are unilateral schemes and as such India does not have to accord the same preferential treatment to the goods of developed countries, on reciprocal basis.

In addition, India is a participant to Global System of Trade Preference (GSTP), Bangkok Agreement (BA), SAARC Preferential Trading Arrangement (SAPTA) under which India grants and receives tariff concessions on imports and exports. To avail these tariff preferences, it is to be ensured that import or export qualifies for the preference in accordance with the rules of origin requirement of the agreement concerned. The Government has notified the agencies authorised to issue Certificate of Origin for each of these agreements. Export Inspection council (EIC) is the sole agency authorised to issuer Certificate of Origin under GSTP. The list of agencies authorised to issue Certificate of Origin under BA and SAPTA is provided in appendix – 51 A given in the Handbook of Procedures volume I. However, for India – Sri
Lanka Free Trading Agreement, the certificate of origin is issued by Export Inspection Council. The authorised agencies also provide services relating to issuance of certificate of origin including details regarding the rules of origin, list of items covered by an agreement, extent of tariff preference, verification and certification of eligibility etc. The Government has also nominated certain authorised agencies to issue non-preferential certificate of origin in accordance with the Article II of International Convention relating to simplification of customs Formalities, 1923. These Certificates of Origin only provide the evidence regarding the origin of goods and do not provide any right to preferential tariffs. The list of these agencies is provided in Appendix – 51B as given in Hand Book of Procedure Vol. 1. These agencies are various Chambers of Commerce, Export Promotion Council / Commodity Board, Development Commissioner of Export Processing Zones, Industry Export Associations etc. 3


4. 'Foreign Trade Management' by Dr. Varma & Agarwal, Forward Book Publisher, New Delhi. (Edition 1997)

5. 'How To Export', Edited by G.P. Banerji, Published By ACMA (Automotive Component Manufacturers Association of India), New Delhi, (year 2000).


7. 'Charted Secretary Jan. 2000', Published by ICSI (Institute of Company Secretary of India), New Delhi.
