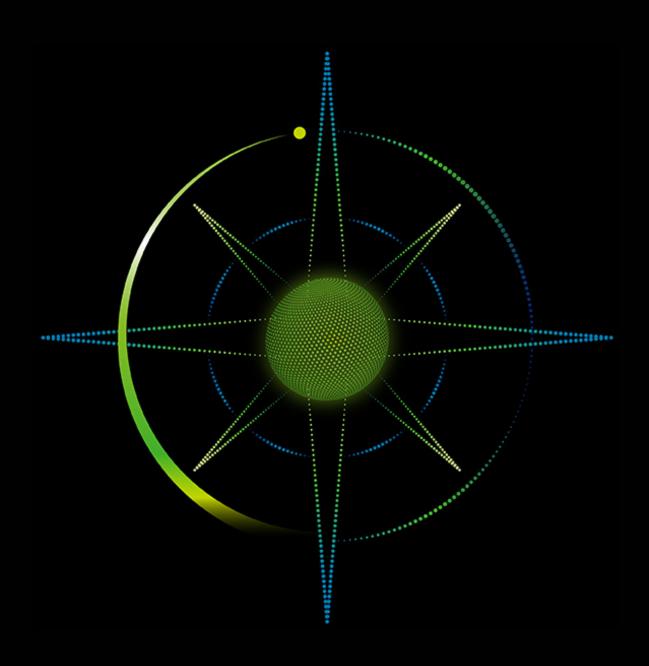
Deloitte.



Global Trade Advisory Landscape





The global adoption of the Trade Facilitation Agreement (guidance on WCO'c safe framework of standards) has brought about significant transformations in customs and other regulatory compliances and procedures related to cross-border trade. Over the past decade, the National Committee of Trade Facilitation has undertaken several initiatives to enhance the ease of doing business and foster trust-based partnerships with the trade community. These initiatives encompass focus on pre-arrival processing, the establishment of a single window system with participating government agencies, enhancements to ICEGATE features to minimise physical interactions and promote a paperless environment, a higher level of facilitation through the AEO programme and the adoption of faceless assessment procedures.

Customs reforms – Reshaping India's trade

Ease of doing business



- Turant customs and faceless assessment
- Self-assessment mandated
- Revamped authority of advance rulings to minimise disputes
- Advance filing of the bill of entry is mandated to reduce release time
- Implementation of e-sealing
- Introduction to post clearance audits
- Deemed out of charge through a provision of customs compliance verification to a bill of entry

Digitisation



- Common customs electronic portal for electronically filing documents like bills of entry, shipping bills, etc.
- (FY 2022-23, approximately 4,130,000 BOE and 6,530,000 shipping bills have been processed through ICEGATE's portal)
- Payments through electronic cash ledger ensuring contactless payment
- Presenting documents on E-Sanchit
- Launch of the ICEGATE and Customs Single Window Interface for Facilitation of Trade (SWIFT)
- Implementation of a Risk Management System (RMS)
- Vaani Chatbot -24*7 assistance
- The Indian Customs Compliance Information Portal (CIP) provides access to customs procedures and regulatory compliance details for approximately 12,000 customs tariff items.
- Launch of the ICETRAK mobile application for live tracking

Make in India



- Import of Goods at Concessional Rate of Duty or for Specified End Use (IGCRS)
- Remission of Duties and Taxes on Export Products (RoDTEP)
- Manufacturing and other operations in a bonded warehouse (MOOWR Scheme)
- Product-linked incentive schemes
- Phased manufacturing plan
- Entering into free trade agreements with key trade partners like the UAE, Australia, EFTA etc., taking the total number to 19

These initiatives enabled a reduction in dwell time in cargo clearances and reduced the compliance cost and burden of the trade as the focus moved from intervention to facilitation with need-based checks and increased certainty.

Further, to minimise potential disputes, the advance rulings mechanism underwent a revamp, facilitating businesses in obtaining clarity on crucial aspects of import clearances such as classification, exemption eligibility, and valuation. The introduction of the Customs Information Portal, along with updates to the CBIC and ICEGATE portals, has equipped the trade community with valuable insights and information pertaining to cross-border trade. This has significantly enhanced predictability, contributing to the ease of doing business.

With streamlined facilitation measures and reduced scrutiny during the clearance stage, the responsibility has now transitioned to the post-import stage through the Post Clearance Audits (PCA). The trade is expected to showcase compliance in terms of procedures followed, disclosures made, and records maintained related to

cross-border trade. In addition to post-clearance audits, specific regulations have been introduced, requiring trade to adhere to and become subjects of audits and verifications. Examples include compliance with rules of origin (CAROTAR regulations) and the utilisation of end-use exemptions (IGCR regulations).

In this scenario, it is imperative for businesses to not only assess and adjust their compliance and procedures in line with legal requirements but also to implement processes for self-check, robust documentation, record keeping, and digitisation in compliance processes. Also, it is vital to stay informed about important changes, keeping an eye on both opportunities and possible changes in responsibilities, and then taking the required actions accordingly.

Given the context, this playbook strives to provide insight into some select topics of relevance in terms of overview and points for consideration.



Common classification inaccuracies reported (usually based on audit reviews, department findings, etc.)

Differences in interpretation of the product literature, WCO Harmonised System of Nomenclature (HSN) Notes, and varying industry practices Alteration in the classification due Challenging task of classifying to changes in chemical composition, technologically advanced / ingredients, manufacturing process, or convergence products product preparation formula Complete equipment imported Incorrect duty rates, exemptions, might have been erroneously etc., despite employing the categorised as parts, resulting in 'appropriate classification inaccurate duty payments Numerous Harmonised System Decelaration of product (HS) codes used description is incomplete, or for the classification of a sometimes even a general specific product at various description as per the HS code points in time is used, say 'others'

Be diligent in examining these dimensions

- Know your product's composition, features, ingredients, function, uses, etc.
- Appropriately consult the relevant resources for classification
- Obtain suitable technical or legal opinions to substantiate the declared classification, when needed
- Ensure proper documentation and a centralised system for customs classifications, specifically for regularly imported items and commonly utilised exemptions
- Have knowledge of any discrepancies in industry practices or ongoing disputes related to similar products between stakeholders and customs authorities

- Consider pursuing an advance ruling for intricate classification matters involving recent revisions in tariffs, rates, or exemptions
- Evaluate the conclusion or outcome of the past investigation in relation to your product classification, if any
- Ensure your preparedness from a customs audit perspective
- Conduct periodic classification reviews in relation to changes in laws, exemptions, product features, etc., to maintain consistency
- Use technologies to automate the classification process to avoid human error

What would happen if you did not comply?

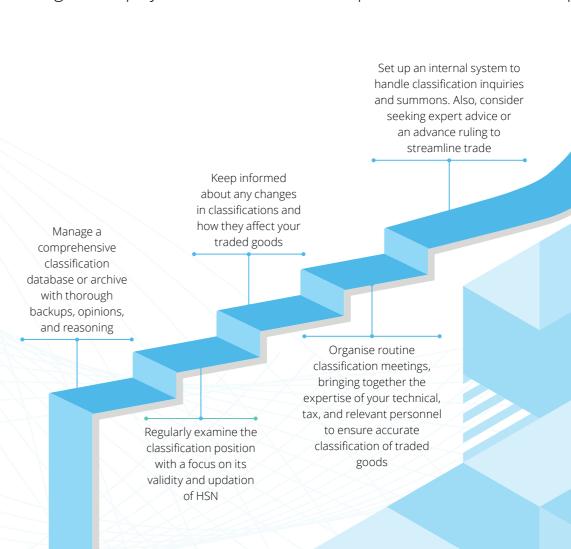
Differential duty, interest, fines, and penalties

Delays in customs clearances

Search, seizure, and confiscatiacon of products

Denial of import and export privileges such as AEO and FTAs

Things or steps you must consider for improved classification compliance





of the General Agreement on Tariffs and Trade, referred to as the GATT Valuation Code. The GATT valuation code sets out a fair, uniform, and neutral system for determining

Section 14 of the Customs Act, 1962, lays down the basis for the valuation of imports and exports of goods. In India, the rates of customs duties levied on imported goods and export goods are either specific or on an ad valorem basis.

What is Transaction Value (TV)?

Transaction value is accepted as assessable value when there is no restriction on the disposition or use of goods and the buyer and seller are not related and price is the sole consideration for sale.

The transaction value includes all costs incurred up to the place of importation of goods and any other consideration paid in relation to imported goods, e.g., royalty, licence fees, etc.

Transaction Value = Price actually paid or payable by the importer + Other charges to be paid that are not included in the import price

What are the additions to be made to the transaction value (if not already included)?

Commission and brokerage, except buying commission

Cost of packing and container

Cost of transportation, insurance, and related charges up to the price of importation

Material components incorporated in imported goods

Cost of goods, dies, and moulds used to produce imported goods

Commission and brokerage, except buying commission

Cost of packing and container

Cost of transportation, insurance, and related charges up to the price of importation

Material components incorporated in imported goods

Cost of goods, dies, and moulds used to produce imported goods

Royalty and licence fee, if it is a condition of sale

Any subsequent proceeds from the resale or disposal

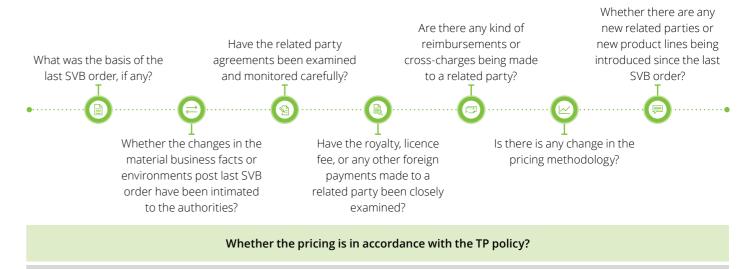
Other payments made as a condition of the sale

What could be the possible reasons for rejection of Transaction Value (TV)?

Reasons to doubt the truth Other methods of valuation to be applied in a sequential Fraudulent and manipulated and accuracy of the declared order when the transaction value method cannot be used, documents or TV is rejected by the officer Identical/similar goods Rejection is allowed only Rule 4 - TV of identical goods imported at significantly on reasonable grounds, higher value and the proper officer records those reasons as well **Rule 5** - TV of similar goods Abnormal or special discounts Sequence MUST be followed In case of doubts as to the truth or accuracy of Mis-declaration in Rule 7 – Deductive value the TV: description, quality, Step 1: Customs quantity, country may require further of origin, year of explanation manufacture Rule 8 – Computed value Step 2: Customs applies the alternative methods Non-declaration of brand, Rule 9 - Residual method or best grade, specifications, etc. judgement method Significant fluctuation in the pricing of imported Rule 10 – Inclusions to be made to arrive at TV goods

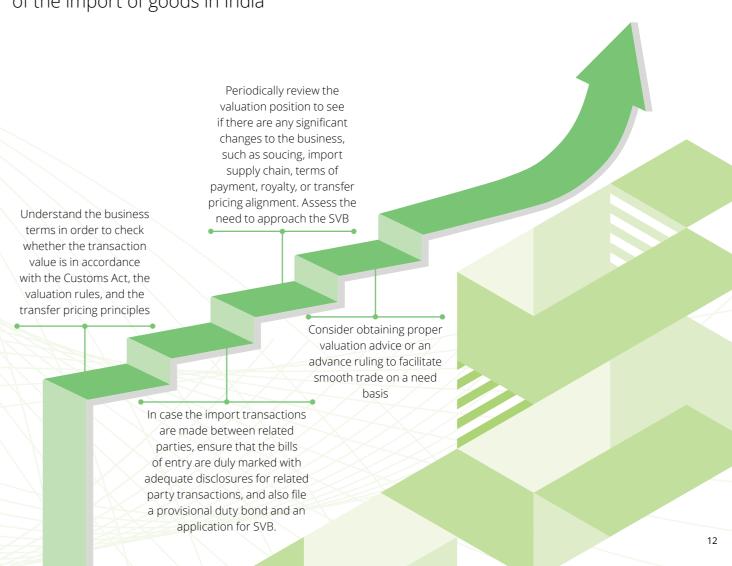
The CBIC has introduced the **Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023**, addressing concerns about systematic undervaluation. According to these rules, CBIC can identify specific goods suspected of undervaluation, issue an order with detailed information, and mandate importers to declare the goods' value using a unique quantity code. Importers may also need to fulfil specified obligations or submit additional documents to verify the accuracy of the declared value.

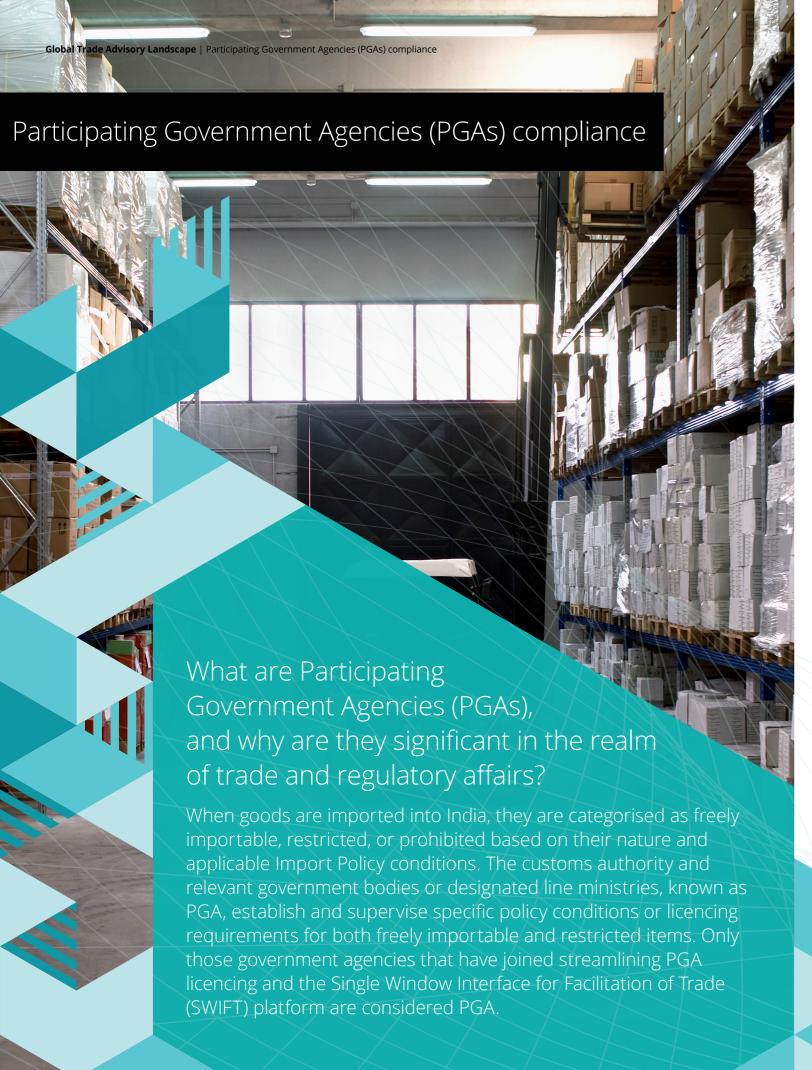
What are the aspects to consider in related party imports?



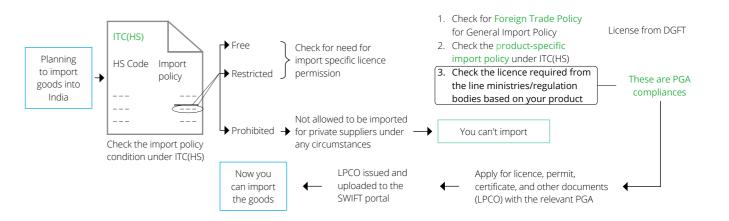
Reference shall be made to SVB only in case of a change in business position or circumstances from the last SVB order

Things or steps you must consider for the correct customs valuation of the import of goods in India





How can you know about your PGA requirements?



Various PGAs are active in India, each with specific roles and functions:



Directorate
General of Civil
Aviation (DGCA)

Issues licences, sets safety standards, and oversees the operations of civil aviation activities



Plant Quarantine Authority of India (POAI)

Implements measures to prevent the introduction and spread of plant pests and diseases through imported plants and plant products



Drug Controller
General of India

Approves new drugs and medical devices, monitors the quality of pharmaceutical products, and ensures compliance with regulatory standards



devices

(CDSCO)
Approves and monitors the manufacturing, import, and sale of drugs and medical

Central Drugs

Organisation

Standard Control



Food Safety and Standard Authority of India (FSAAI)

It regulates the manufacture, storage, distribution, sale, and import of food articles while also establishing standards to ensure food safety.



Ministry of Textiles (MOT)

It is responsible for the formulation of policy, planning, development, export promotion, and regulation of the textile industry in India.



Wildlife Crime Control Bureau (WCCB)

It is a statutory body established by the Government of India under the Ministry of Environment, Forest and Climate Change to combat organised wildlife crime.



Ministry of Consumer Affairs, Food and Public Distribution (MCAFPD)

The department administers the policies for consumer cooperatives, price monitoring, essential commodity availability, consumer movement, and control of statutory bodies such as the Bureau of Indian Standards (BIS) and weights and measures.



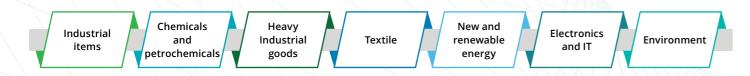
Central Pollution Control
Board (CPCB)

CPCB runs nationwide programmes of ambient air quality monitoring known as the National Air Quality Monitoring Programme (NAMP).

We must examine the relevant government ministries, the corresponding regulations they enforce, and any licensing prerequisites associated with our product.

Product category Applicable licence		Which is the relevant PGA?		
Computers and laptops	General import licence and authorisation Bureau of Indian Standards licence Extended producer responsibility	DGFT BIS MoEF and CPCB		
Pharmaceutical products	Oxytocin test licence Extended producer responsibility	Drug Controller General of India MoEF and CPCB		
Electronics	BIS licence Extended producer responsibility	BIS MoEF and CPCB		
Telecommunication	Wireless planning and coordination licence General import licence Extended producer responsibility	WPC Wing of Ministry and Communication and Information Technology DGFT		
Chemical and fertiliser	BIS Licence under the Atomic Energy Act Import certificate under NDPS rules	BIS Atomic Energy Regulatory Board Central Bureau of Narcotics		
Food	Licence from FSSAI EPR on plastic packaging BIS licence	FSSAI MoEF and CPCB BIS		

Some upcoming Quality Control Orders (QCO) that are due for implementation within the next 6 months



Streamlining PGA licencing through the Single Window Interface for Facilitation of Trade (SWIFT) platform

Integrated declaration

Separate forms and declarations pertaining to different PGAs have been eliminated. Now submit integrated declarations in import/export containing clearance related information

e-storage and computerised handling of documents

PGAs upload the license, permit, certificates, and other documents (LPCO) on e-SANCHIT and communicate the same to the beneficiary importer or exporter, who refers to the same in the customs

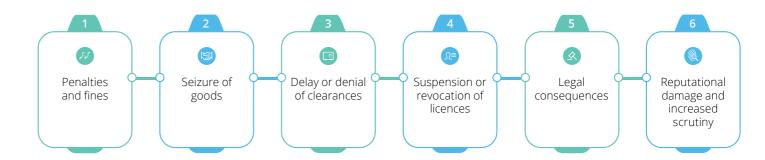
Automatic routing of PGA declarations

Automatic referring of consignments to PGAs for their intervention

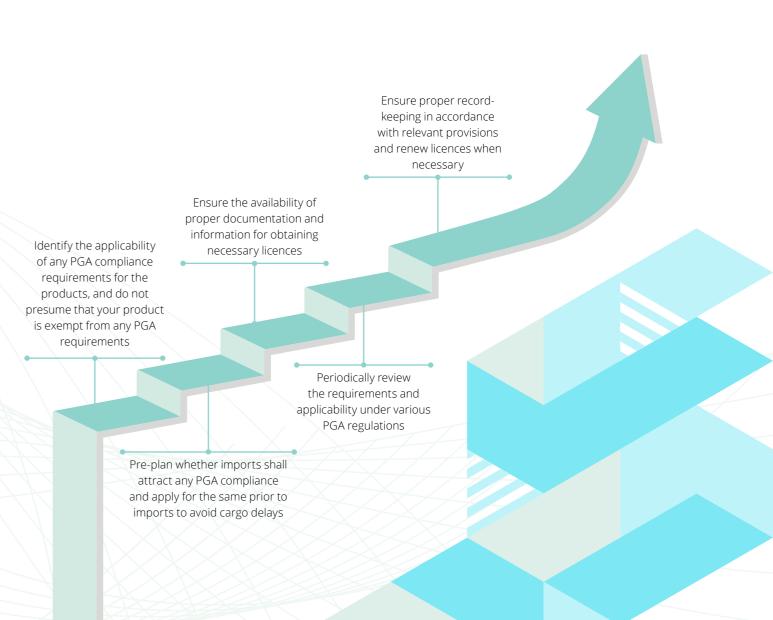
Online communication

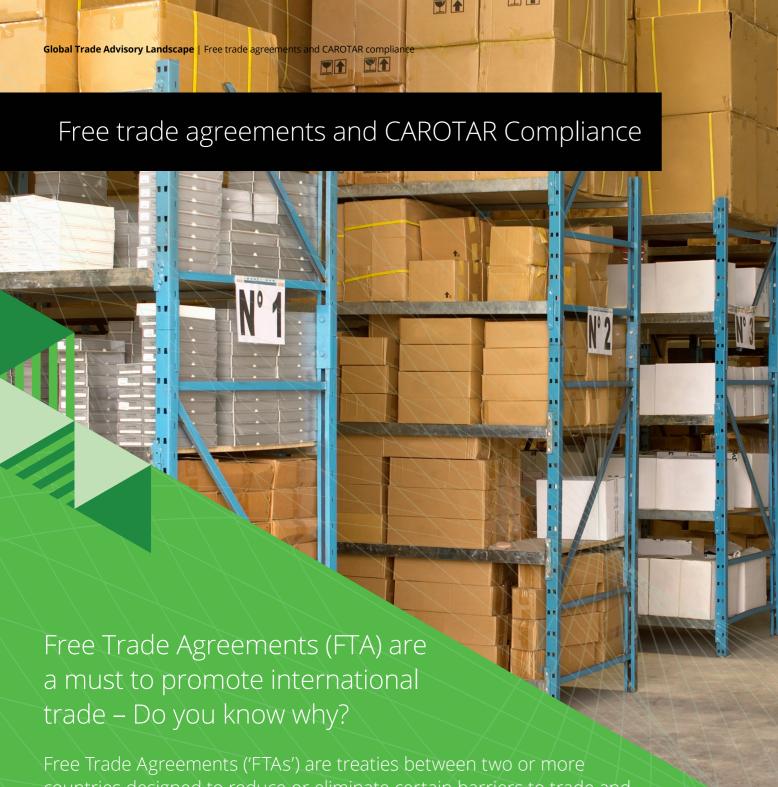
Online communication of decisions relating to release, no objection, non-compliance, destruction, or product out of scope $\,$

What would happen if you did not comply with non-tariff requirements?



Things or steps you must consider for the correct customs valuation of the import of goods in India





Free Trade Agreements ('FTAs') are treaties between two or more countries designed to reduce or eliminate certain barriers to trade and investment and to facilitate stronger trade and commercial ties between participating countries.

Free trade agreements don't just reduce or eliminate tariffs, they also help address behind-the-border barriers that would otherwise impede the flow of goods and services, encourage investment, and improve the rules affecting such issues as intellectual property, e-commerce, and government procurement.

How does using an FTA benefit trade?

Economic growth

Advantages of reduced costs and duty savings on import and export of products covered or eligible under the FTA

Improves efficiency in industries

Enhancing the efficiency of their supply chains and procurements using FTAs, industries can choose the location of plants by comparing advantages under various FTAs

Promotes fairness

Every business, irrespective of size, can avail itself of an advantage under FTAs.

Promotes international trade

FTA provides preferential access to certain sectors and international markets, and hence, it would promote international trade.

Illustrative duty benefits

Particulars	Import without FTA	Import under FTA
Assessable value	100	100
BCD (20%)	20	-
Sub Total	120	100
Social welfare surcharge (10%)	2	=
Sub Total	122	100
IGST 18%	22	18
Total duty and charges	44	18
Net tax cost (after credit)	22	0

Countries with which India currently has free trade agreements

Name of FTA	Member countries
ASEAN India Free Trade Agreement	Malaysia, Singapore, Thailand, Vietnam, Myanmar, Indonesia, Brunei Darussalam, Lao People's Democratic Republic, Cambodia, Philippines
Japan India Comprehensive Economic Partnership Agreement (JICEPA)	Japan
India Korea Comprehensive Economic Partnership Agreement (IKCEPA)	Korea
India-SAARC Trade Agreement	Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka
South-Asia Free Trade Agreement (SAFTA)I	Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka, Afghanistan
Asia Pacific Trade Agreement (APTA)	Bangladesh, People's Republic of China, Republic of Korea, Sri Lanka, Laos, Magnolia
India Singapore Comprehensive Economic Cooperation Agreement	Singapore
India Malaysia Comprehensive Economic Cooperation Agreement (IMCECA)	Malaysia
Indo-Bhutan, Bangladesh, and China Agreement on Trade, Commerce & Transit	Bhutan, Bangladesh, and China
Australia- India Comprehensive Economic Cooperation (AI-CECA)	Australia
India- UAE CEPA	UAE member countries
India-Afghanistan Preferential Trade Agreement	Afghanistan
India-Nepal Treaty of Nepal	Nepal
India Thailand Free Trade Agreement	Thailand
India Chile Preferential Trade Agreement	Chile
Indo Sri Lanka Free Trade Agreement	Sri Lank <u>a</u>
India-Africa Trade Agreement	India, Angola, Cameroon, Ghana, Mauritius, Nigeria, Senegal, Swaziland, Tanzania, Zaire, Zimbabwe, Botswana, Cote D Ivory, Liberia, Mozambique, Rwanda, South Africa, Seychelles, Uganda, Zambia
India-MERCOSUR PTA	Argentina, Brazil, Paraguay, Uruguay
India Mauritius Comprehensive Economic Cooperation and Partnership Agreement	Mauritius
India- European Free Trade Association (EFTA) Trade and Economic Partnership Agreement	Iceland, Liechtenstein, Norway, and Switzerland

The FTAs between India and the UK, Canada, Oman and Israel are under negotiation.

Top products or sectors eligible for FTA benefits



In India, the benefit of preferential duty under any FTA is subject to verification of origin details as prescribed under CAROTAR Rules

Do you know what are Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR Rules) in India?

The Indian government has issued CAROTAR Rules, which aim to supplement the rules of origin provided under the FTAs. It outlines obligations and documentation requirements for importers and users of FTA to prevent the improper use of FTA benefits.

As per these rules, if the declared origin in a Certificate of Origin (CoO) is questionable, customs officers shall inquire with the importer for details and may contact the exporting country's relevant authority for origin verification.

Mandatory compliance under CAROTAR



Origin-related details such as the CoO reference number, date of issuance, originating criteria, etc. should be mentioned while filing every bill of entry



Possess and maintain the value-addition and costing-related data with respect to goods imported under each BOE in Form 1 prescribed under CAROTAR Rules



Retain all the supporting documents, such as, BOE, preferential CoO, and Form I of the CAROTAR Rules, justifying the FTA claim for a period of five years

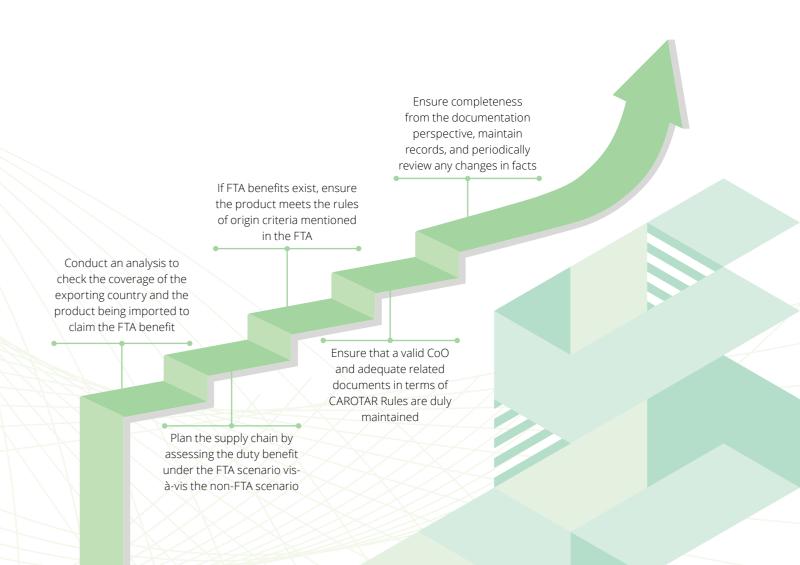


Knowledge of the above process helps the importer identify any issue at an early stage, and where required, the same could be addressed even before goods are imported.

What are the consequences of non-compliance under an FTA?



Things or steps you must consider for availing benefits under FTA and ensuring compliance under CAROTAR Rules





Rules') to make sure that the intended fiscal

on the import of raw materials uses such need to adopt the Customs (Imports of Goods imported goods for the intended purposes at Concessional Rate of Tax) Rules, 2022 ('IGCR only. This approach reinforces accountability and transparency in the utilisation of tax

The following are important aspects of the IGCR Rules

A. Coverage under IGCR Rules

Application of the IGCR Rules attracted on fulfilment of the following two conditions:

An exemption notification explicitly mentions the specific requirement to Condition 1 comply with the IGCR Rules.

Condition 2

The goods imported under the exemption notification shall be for the purpose of manufacturing activity, provision of output service, or being put to a specified end use.

B. Obligations on the importer

- The importer is required to register by providing **one-time prior information on the portal in Form IGCR-1**, such as the name and address of the job worker, description of imported goods, etc.
- II. Submit a continuity bond with such surety or security in the customs jurisdiction of the manufacturing premises
- III. Maintain records with respect to imports such as quantity and value, date of receipt, consumption and exports, quantity sent to end-use recipient or job work, re-exported quantity, remaining stock, etc.

IV. Compliances under IGCR:

- a. Record keeping: Records such as date and quantity of import of goods, export quantity, manufacturing process undertaken, defective goods, job work, and waste generated need to be maintained for every bill of entry on a transactional
- b. Monthly statement filing: The importer is required to file monthly consumption reports and returns in Form IGCR-3 by the tenth of the following month.
- c. Re-export or clearance of unutilised or defective goods: The importer should utilise the imported goods within the specified time limit or within 6 months in case no time limit is specified. Alternatively, there is an option to either re-export or make voluntary payment with applicable duty and interest.

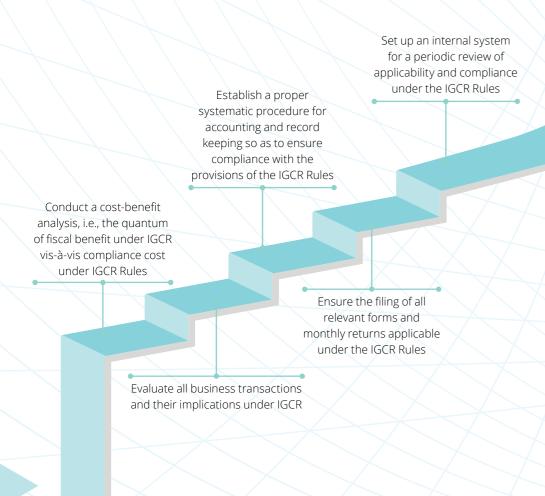
Which industries would be covered under the IGCR Rules?



What would happen if you did not comply?



Things or steps you must consider for improved compliance under IGCR Rules



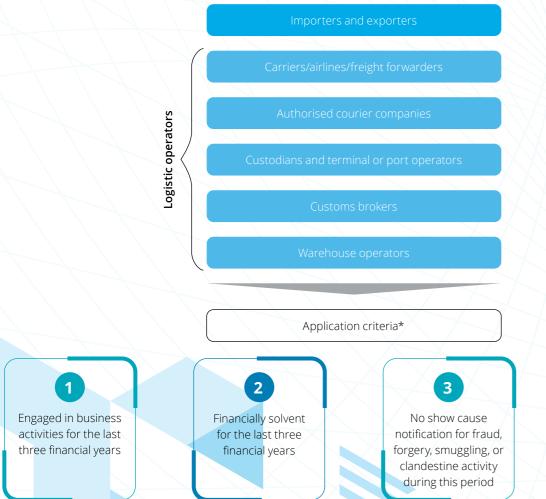


Key benefits of AEO



In other countries, AEO status is recognised through Mutual Recognised Agreements (MRAs) that facilitate rapid clearances there.

Who can apply, and what are the application criteria?



^{*} Eligibility conditions are relaxed for MSME

What are the AEO categories and their validity periods?



Do you know that the level of benefits varies according to the status of the AEO?

KEY BENEFITS	TIER 1	TIER 2	TIER 3
Direct port delivery (DPD) for imports and direct port entry (DPE) for exports	✓	✓	✓
Deferred payment of customs duty	Х	✓	✓
Bank guarantees	50% of the requirements	25% of the requirements	Completely exempt
Scanning of containers	√	✓	✓
Facility for MRP labelling on premises	Х	✓	✓
E-mail intimation of vessel arrival	✓	✓	√
Access to import/export data from ICEGATE	Х	✓	√
Priority of assessment BoE/SBs selected	Х	✓	√
Paperless declarations	Х	✓	√
Client relationship manager (CRM)	✓	✓	1
24x7 customs clearance (no merchant overtime fees)	✓	✓	✓
Separate earmarked space at custodian premises	✓	√	✓
Faster investigation and dispute resolution by adjudicating authority	√	✓	V
Faster clearance of SVB	Х	√	1
Faster processing of rebate/refund/drawback	Х	✓	√
Trade facilitation by other countries under the Mutual Recognition Agreement (MRA)	Х	√	√
Waiver of seal verification	Х	√	√
ID cards for entry at customs premises (port/ICD/CFS)	1	√ ✓	1
Self-certified documents	X	Х	✓
Validity of status	3 years	3 years	5 years
Post-clearance audit	Once in 3 years	Once in 3 years	Once in 5 years

^{*} AEO Tier 1 certification undergoes an automatic renewal process through an annual self-declaration, allowing for renewal based on a comprehensive review.

25 26

4

Handled 25 import

or export documents

in the preceding

financial year

Does holding AEO status raise the likelihood of undergoing an audit?

As AEO status holders receive enhanced facilitation, there is a heightened chance of being audited based on specific selection criteria. Nonetheless, non-AEO entities are also subject to post-clearance audit (PCA). Thus, AEO registration may or may not influence selection for PCA. Additionally, AEO audits primarily involve a process review, which determines the initial certification or status.

Be diligent about the following evaluation parameters before filing an AEO application

Process map Site plan Cargo and conveyance security* Security plan – premises and personnel security* General compliance and record management IT security Legal compliance Managing commercial and transport records Business partner security** *Not required for Tier 1 **Business partner details for Tier 3 only

Applications can be filled out online for Tier 1, Tier 2, Tier 3, and LO.

Consider the upgrade from

AEO Tier-2 to Tier-3

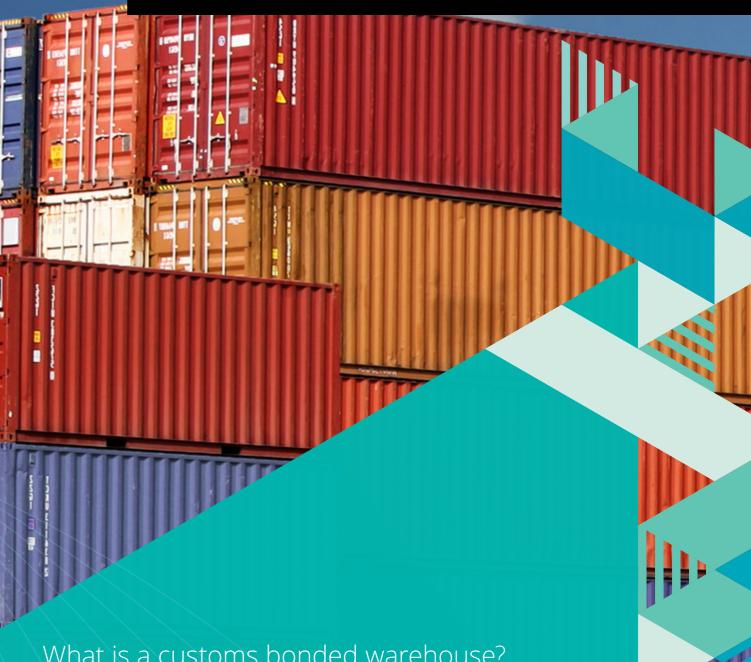
Things or steps you must consider for opting for AEO status and efficiently utilising its underlined benefits

compliance and promptly communicate any substantial changes in business processes to the AEO programme manager Seek appropriate guidance for AEO application preparation and support during on-site verification Conduct a cost-benefit analysis to assess the advantages of holding AEO status Inform the authorities about utilising AEO benefits and oversee the timely payment of deferred duty as per the prescribed Recognise any deficiencies deadlines in the business process

> and implement necessary corrective actions

Consistently review

Customs bonded warehouse

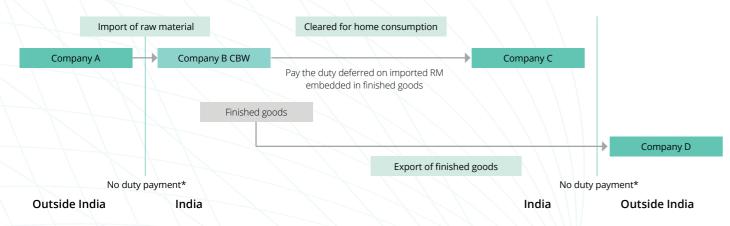


What is a customs bonded warehouse?

A customs bonded warehouse ('bonded warehouse' or 'CBW') is a licenced premise where imported goods can be stored as is or for further manufacturing and other operations such as packaging, labelling, re-packing, etc. The import duties levied on the import of raw materials and capital goods in CBW are deferred at the time of import.

What is a customs bonded warehouse?

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^{*}A customs bonded warehouse can be used to store both local and foreign goods.

Benefits of importing goods in a CBW

- CBW units are allowed to import inputs and capital goods under customs duty deferment with no interest liability. Further, currently, IGST is also deferred on such imports.
- 2 There is no mandatory export obligation criteria to be fulfiled
- 3 No minimum value addition required in the case of a CBW unit
- 4 No geographic limitation
- 5 No capacity expansion or new R&D is required for the conversion of existing units
- 6 No requirement for net foreign exchange
- 7 No actual user condition

Comparison of customs bonded warehouse vis-à-vis other import incentive schemes

Parameters	Advance Authorisation Scheme	Export Promotion of Capital Goods Scheme	Export Oriented Units	Customs Bonded Warehouses
Applicability of the actual user condition	Yes	Yes	Yes	Yes
Export Obligation (EO)	Minimum 15% value addition EO - 18 Months	6 times duty saved Block/wise export criteria and overall EO are six years	Positive net foreign exporting (NFE) requirement is over five years	No such requirement
Domestic clearances	Inputs cannot be used for domestic clearances until the discharge of the EO	No restriction on the usage of CG for domestic manufacturing	Allowed, subject to compliance and payment of GST, with payment of basic customs duty and GST	No restriction, subject to compliance and payment of customs duty on raw materials and GST on finished goods
Licence redemption related compliance	Required	Required	Debonding Compliance	Debonding Compliance
Validity of the licence	12 Months	24 Months	60 Months	No limited period
Adherence to Standards Input Output Norms (SION)	Yes	Not applicable	Yes	Norms defined by the company
Duty Drawback + RoDTEP	Yes	Yes	-	No

What are the compliances and approvals under the CBW scheme?

- Online application for approval to obtain a customs bonded warehouse licence. Further, such CBW premises are to be included in the IEC certificate and GST registration certificate.
- Warehouse Bond: Execution of a triple duty bond
- Appointment of warehouse keeper: Use of digital signature by warehouse keeper for filing electronic documents
- Filing monthly returns: Consumption report to be filed by the tenth of the next month
- Maintenance of records for five years: Maintain records such as inward receipts, in-stock maintained, renewal of goods and samples, and documents such as the BoE, shipping bill, etc.

Other important aspects you need to know before opting for CBW

Compliances mandated by the participating government agencies, such as the Food Safety The depreciation benefit is not available if imported and Standards Authority of India (FSSAI), the Drug Requirement of furnishing a security amount and capital goods are cleared for home consumption after Controller General Directorate General of Foreign keeping the records in both physical and digital format use in a bonded warehouse. Trade (DGFT), the Export Inspection Council, etc., shall be applicable Users of existing schemes such as EOUS and Operating as CBW has no effect on AEO status, i.e., all Existing exemptions under customs on clearance of SEZS should plan for full exit or debonding before imported raw material from the bonded warehouse enefits available as an AEO continue notwithstanding conversion of operations into CBW. For SEZs, physical shall be available. operations under CBW relocation will also be required. CBW operating as a fully enclosed structure is not a No physical control over a CBW unit by authorities on prerequisite for the grant of licences. However, the An AEO tier 2 status holder operating under CBW can a day-to-day basis. However, the unit will be subject to nature of the premises, the facilities, equipment, and ensure smooth DTA clearance as well. risk-based audits. personnel put in place for secure storage of goods will be the criteria duly scrutinised by the authorities.

The CBW unit can send inputs for job work, subject to proper accounting for such goods.

^{*}Please note that in the Finance Act 2023, a new Section 65A has been proposed to be introduced under the Customs Act, which provides that no exemption would be provided on payment of IGST and cess on goods imported under the MOOWR Scheme.

The section has not yet been notified.

Advance rulings under customs



Review the readiness in terms of application, premises, documents, etc. under the MOOWR requirement and seek advice and support, including on specific points of consultation with the authorities

Global Trade Advisory Landscape | Customs bonded warehouse

Ensure completeness from the documentation perspective, maintain records, and periodically review for any changes in facts

Adhere to the compliances and necessary requirements such as record maintenance, tracking of input with output, monthly return filing, etc.

Identify the gaps in the clearance process, security measures, legal compliances, tracking of inputs and outputs, etc., and try to plug such loopholes by developing standard operating processes based on requirements in terms of documentation, procedure, compliance, etc, in a bonded warehouse

What is the relevance of advance rulings in customs, and how does it contribute to business certainty?

In the realm of customs, numerous domains witness disputes with the Revenue due to disparities in technical, legal, and factual interpretations, resulting in substantial costs and litigation that disrupt businesses. To address this challenge of interpretation, the Customs Act offers a statutory mechanism for obtaining advance rulings.

Advance Rulings offer businesses the opportunity to proactively address potential trade disputes by allowing them to approach the revenue with precise queries, seeking advance confirmation on specific legal and tax positions through consultations. These rulings enhance clarity for businesses, averting disruptions caused by disputes.

Conduct a cost-benefit

analysis between the existing customs-related concession or benefit visà-vis the conversion of the existing operation into a

Areas where such advance rulings can be sought and who can apply for such rulings?



Some situations where businesses may seek advance rulings include



The latest-generation products feature advanced technology that doesn't align with the existing tariff entry. Consequently, Advance Rulings may be sought to obtain an accurate classification for these products.



Clarity on origin criteria under FTA notification

We may approach the Customs Advance Rulings Authority (CAAR) to seek clarity on the substantial processing happening in the exporting country to meet the origin criteria under the concerned FTA.



Availing the conditional exemptions

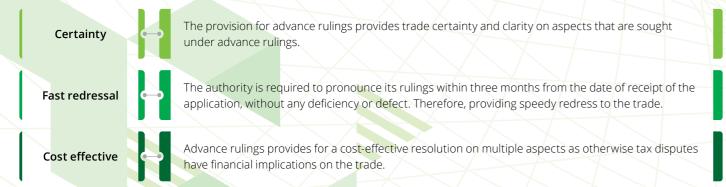
There are certain exemptions available that are limited to end use-based conditions. Therefore, seeking clarity on availing of these exemptions may require approaching the CAAR.



Ongoing investigation

An application may be filed even with an ongoing DRI investigation, provided a show cause notice or a pre-consultation notice has not been issued.

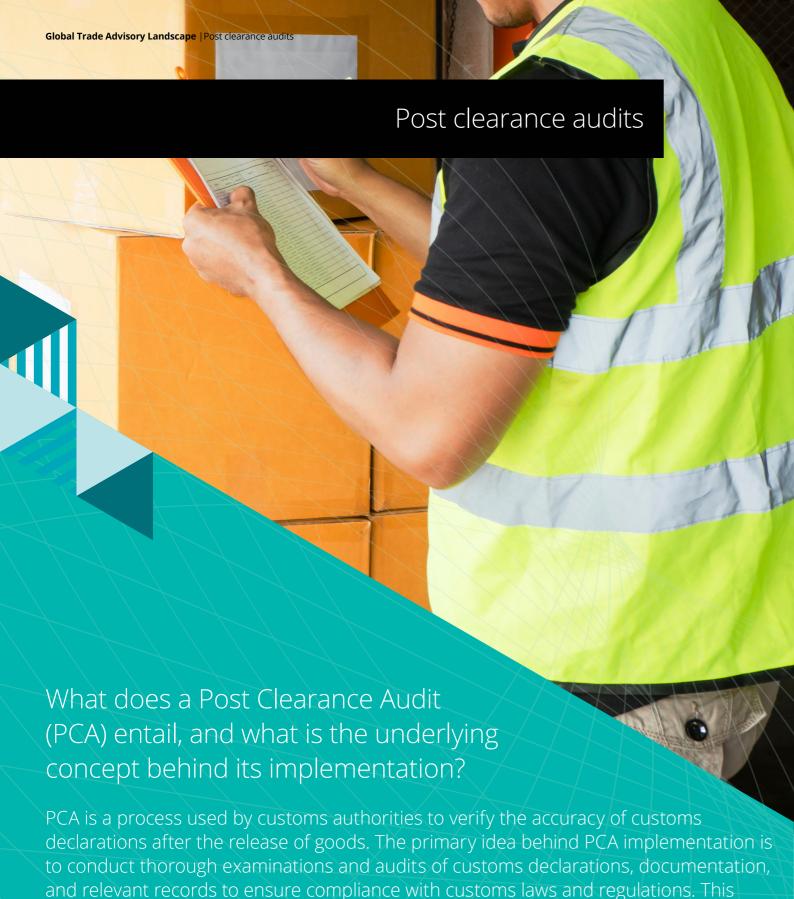
Benefits of seeking an advance rulings under customs



Other features







audit is typically carried out after the goods have been cleared through customs, providing a mechanism for authorities to review and verify the declared values, classification, origin, and other relevant details.

Journey of PCA

Post-import audit provisions introduced for AEOs for select importers

Extended scope of audit provisions covering all importers, exporters, custodians, etc.



Legal onus for compliance rests 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



Faceless assessment from 2020 onwards

Trust-based clearance at the time of import

Goods





Factory





Premises-based audit

Types of audits

Transaction based audit

Involves examining a specific import or export transaction through a review of the bill of entry or shipping bill, invoice, licences, authorisation, etc.

Verify the accuracy and correctness of duty assessments and compliance under the Customs Act or other applicable laws in India

Typically, the auditor does not visit the premises of the exporter or importer.

Transaction selection by the Risk Management

Consultative Letter or Show Cause Notice (SCN) issued on audit findings or observed irregularities

Premised based audit

Involves auditing overall compliance by examining the internal control systems of importers and

Initially conducted through a desk review, gathering information from balance sheets, import data, etc.

Thereafter, the auditor visits premises, inspects goods, records, prepares working papers, and interviews stakeholders within the audited entity

Audit report is issued, and a consultative letter or SCN is issued on findings or observed irregularities

Theme based audit

Focused audit on industry-based specific issues, sectors, or commodities

Conducted as a transaction-based audit, desk audit, and, if necessary, premise audit

Who is covered?

- Importers
- Exporters

- · Custodians and terminal or port operators
- · Customs brokers
- Warehouse operators

- Logistics providers

Selection criteria for audit

- Higher value or volume of imports
- Usage of a free trade agreement
- Import of restricted items requiring licences, authorisations, etc.
- Repeated discrepancies noticed in a particular industry
- Specific intelligence from other customs units or any other government agency, including taxation authorities
- Authorised Economic Operator (AEO) status holder
- Sensitivity of the product or industry
- Related party transactions
- Duty drawback users
- Users of end-use-based exemptions
- Products covered under Anti-Dumping Duty (ADD), etc.
- MOOWR licence premises

Audit findings may subsequently lead to auditor investigation by specialised agencies like the Directorate of Revenue

Intelligence, the Special Investigation and Intelligence Branch, the Central Economic Intelligence Bureau, etc.

Sample case study on selection for customs audit

Introducer Kit (IK) - used in surgeries/ medical treatments Components CTH Country of origin Guide wire 9018-90 Japan 9018-32 Needle Japan 3926 Sheath Japan Dilator 3004 Japan

Vietnam

ABC Ltd. -Cutting, shaping,

ABC India Ltd. -Imports IK under → HS Code 901839, sterilisation, using ASEANand packing in a sterilised pouch India FTA

India

*It is amongst top 10 revenue importers *AEO T2 status holder *SVB order does not include imports from Vietnam

Selected for customs audit

Basis for selection for audit:

*Higher revenue impact *AEO-T2 status holder *Imports at concessional rates under

a free trade agreement *Related party imports

Audit process



On-site verification – To be completed within 30 days

Preliminary desk review -Review of he importer's profile, annual report, cost audit report, income tax audit report, etc.

Preparation of the audit report -Discussions with the auditee and the opportunity to be heard

Issuance of a consultative letter for demand, if any

Key trends of audits in India - Latest audit themes



Classification

- · Incorrect classification for standalone import of parts vs. parts imported in CKD form
- Classification for general-use and specific-use products
- Incorrect classification to avail the FTA benefit
- Misclassification to avoid antidumping duty
- Classification alignment under customs and GST differential rate schedules for import GST



Exemptions

- End-used-based exemption tracking and reporting, especially IGCR
- Incorrect usage of the free trade agreement and other customs exemptions
- Input and output tracking for entities operating under Manufacture & Other Operations under Customs Bonded warehouse Scheme



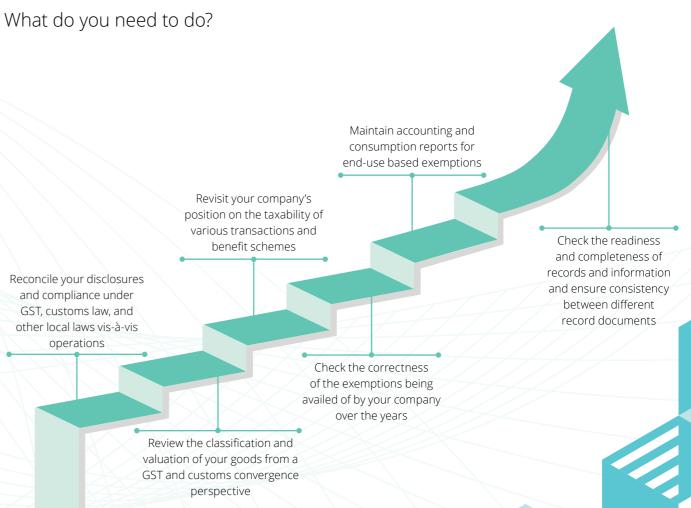
Valuation

Related party transactions involving inter-company adjustments and payouts like royalty, licence fee, advertisement, marketing fee,



Compliance

- · Licencing requirements for restricted imports like BIS compulsory registration, FSSAI licence for food products, MoEF licence for electronic assemblies, etc.
- SCOMET licencing for dual use items, i.e., military and civilian use





The Special Chemicals, Organisms, Materials, Equipment, and Technologies (SCOMET) policy of India is a component of the Foreign Trade Policy. It comprises a list of items that have dual-use potential, serving both civilian and military applications. The SCOMET list is designed to regulate and control the export of these sensitive goods, including chemicals, organisms, materials, equipment, and technologies, in compliance with India's international commitments on disarmament and non-proliferation. The policy reflects the government's efforts to prevent the misuse of such items and to ensure responsible and secure international trade.

List of items category under SCOMET

Category	SCOMET items	Licencing authorities	Remark
0	Nuclear materials, nuclear-related other materials, equipment, and technology	Department of Atomic Energy (DAE)	Including items mentioned in Note 2 of the CIN of the SCOMET List
1	Toxic chemical agents and other chemicals	DGFT	
2	Micro-organisms, toxins	DGFT	
3	Materials, materials processing equipment, and related technologies	DGFT	
4	Nuclear-related other equipment and technology not controlled under Category '0'	DGFT	
5	Aerospace systems, equipment, including production and test equipment, and related technology and specially designed components and accessories thereof	DGFT	
6	Munitions list	Department of Defence Production (DDP)/Ministry of Defence	Excluding those covered under Notes 2 and 3 of the CIN and sub-categories 6A007 and 6A008
7	Reserved**	DGFT	
8	Special materials and related equipment, material processing, electronics, computers, telecommunications, information security, sensors and lasers, navigation and avionics, marine, aerospace, and propulsion	DGFT	

^{**} DGFT reserves this list for potential future additions to the SCOMET list, indicating that it will be utilised for such updates.

Illustrative list of products and services for which SCOMET may be relevant

Sector	Product/services	Category
Equipment	Manufacturing heat exchangers and thermal systems for aerospace, defence, transportation, energy, and oil and gas applications	
Chemical	Sulphur dichloride, sulphur monochloride, methyl diethanolamine, etc.	1
Special Materials	Germanium, aluminium alloy products, industrial valves, ball valves, and titanium products	3
Sensors	Transducer and measurement systems, assembly line automation and test solutions, research solutions, force and load measuring systems, vibration machines, and dynamometers	4
Equipment	Filament winding machines, accessories, and hydraulic extractors	4
Equipment	High-frequency X-ray generators and high-voltage power suppliers	4
Drone technology	Liquid propellant tanks, aerostructures, software, rocket systems, engines, avionics, spares, and services	5
Defence	Hand grenades, transmission automobile castings, gun barrels	6
Telecommunication	Telecommunication service provider and mobile network operator	8
Technology	Consulting, cybersecurity, cloud, business solutions, infrastructures, information security, microcomputers, microcircuits	8
Technology, defence	Automotives, energy, construction and mining, railways, marine, aerospace, and defence industries	8

Based on our business requirement, you may opt for different types of export authorisations for items listed under SCOMET

Direct export to the ultimate end user: Export to the ultimate end users abroad after due verification process

Export for repeat orders of the same SCOMET items: Repeat export of items of the same technical specifications that have earlier been allowed for export to the same countries or entities

Export for stock and sale purpose: Export of items initially to the stockist abroad and then from the stockist to the ultimate end users in the same country

Export of spare parts under SCOMET for stock and sale: Export of spare parts along with the main item or equipment under stock and sale

Export for or after repair or replacement of defective SCOMET items: Export authorisations for repair or replacement of imported items on being found defective and export authorisation after repair of indigenous or third-party items imported for repair

Temporary export of SCOMET items: Export authorisation for demo, display, exhibition, and tenders and return thereafter

Export of imported items to the same foreign entity or to its OEM: Export of imported items to its foreign supplier or its OEM on obsolescence of technology, dead on arrival, cancellation of order, calibration, testing, etc.

Global Authorization for Intra-Company Transfers (GAICT) of SCOMET items, including software and technology: One-time authorisation for intra company transfer of SCOMET items with a validity of 3 years

General authorisation for export after repair in India (GAER): One-time authorisation for export of imported SCOMET items to the same entity abroad after repair in India

Procedure for obtaining a SCOMET licence from DGFT

Step 1 - Application on the DGFT Portal

Submit online applications with original end-user certificate(s) in hard copy to DGFT (HQ)

Step 2 - DGFT's Inter-Ministerial Working Group (IMWG) assesses on a case-by-case basis

IMWG** convenes monthly

Step 3 - Pre-licence check by the DGFT

Agencies and Indian missions abroad conduct checks Post-shipment verifications are a licencing condition

Step 4 - Grant of licence

DGFT's SCOMET Cell centrally issues export authorisations. IMWG decisions are updated monthly on the DGFT's website.

*A SCOMET licence is valid for 24 months. However, in some cases, licences may be granted for a shorter or longer duration to meet contractual obligations or delivery schedules or on the specific recommendation of the concerned technical or administrative ministry, department, or any other agency.

Do you know what an Internal Compliance Programme (ICP) is and how it is essential to obtain a SCOMET licence?

ICP is a set of internal policies and procedures to help organisations identify and minimise risks associated with the export or transfer of dual-use items. The ICP has been published by NASSCOM after taking input from various government bodies such as DGFT, CBIC, etc.

Key elements

Issue a statement with the **Management Commitment** to comply with the national export control laws and regulations

A written organizational structure that entrusts a person with overall responsibility for export control function

Provide mandatory and continued trainings to all the employees associated with the relevant export control activities

Establishing a process to evaluate whether a contract / transaction involving dual-use items is subject to applicable national export control laws and regulations

Create procedures to have triggers in case of non-compliance and correct the issue as needed

Create an **efficient** filling and retrieval system for export control related documents and information

Perform audits to check the design, adequacy, and efficiency of the export control related procedures

Ensure that dual-use items are **secured against unauthorized removal by employees** or transfer to third parties

Key takeaways

- Businesses should have strong internal controls to identify the transaction types that require SCOMET licencing.
- Have triggers in place for all new transactions or contracts, in case there is a requirement of SCOMET licence
- Non-adherence to SCOMET licencing requirements may lead to confiscation of goods, a fine, and a penalty.
- There are provisions for the imprisonment of the exporter, which can also be invoked.

^{**} IMWG comprises representatives from the Ministry of External Affairs, Department of Defence Production, Department of Space (via ISRO), DRDO, Department of Chemicals and Petrochemicals, National Authority of Chemical Weapons Convention, and Cabinet Secretariat.

Extended Producer Responsibility (EPR)

What does Extended Producer Responsibility (EPR) entail, and what is the underlying concept behind EPR?

In India, Extended Producer Responsibility (EPR) has gained prominence in recent years as a policy approach to address the environmental impact of products and their waste management. While the concept of EPR in India is relatively new compared to some other countries, it is influenced by international practices and aligns with global efforts to promote sustainability.

The Ministry of Environment, Forest and Climate Change (MoEF) has notified rules to regulate the handling and management of plastic waste, battery waste, e-waste, and waste tyres. EPR aims to assign the responsibility to a producer for the environmentally sound management of the product until the end of its life. EPR guidelines include reuse, recycling, use of recycled content, and end-of-life disposal.



How should you be efficient in complying with the SCOMET requirements?

Develop standard operating processes (SOPs) and verify documentation that an organisation needs to maintain based on compliance requirements and best practices

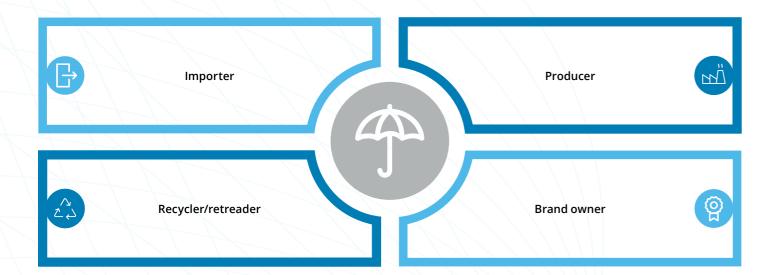
Seek waiver or dispensation from SCOMET applicability before the policy relaxation committee, if required

Determining criteria for inclusion or exclusion of certain categories or transaction types from SCOMET applicability

Perodically perform a transactional review of SCOMET applicability for specified export contracts based on the scope of work or activity being performed

Seek clarification on SCOMET's applicability on products, software, technologies, or any other dual use items from the respective licencing authority, if required

Who is covered under the rules?



Categories of products that requires EPR registration

Plastics - Plastic Waste Management Rules, 2022

- Rigid plastic packaging: Flexible plastic packaging of single layer or multilayer (more than one layer with different types of plastic), plastic sheets or like and covers made of plastic sheet, carry bags, plastic sachet, or pouches
- Multilayered plastic packaging (at least one layer of plastic and at least one layer of material other than plastic)
- Plastic sheets used for packaging as well as carry bags and commodities made of compostable plastic
- Plastic sheets used for packaging as well as carry bags and commodities made of biodegradable plastics

E-waste – E-waste (Management) Rules, 2022

Electric and electronic equipment listed under Schedule I of Rules

Batteries - Battery Waste Management (BWM) Rules, 2022

- Portable batteries used in consumer electronics that are rechargeable
- Portable batteries, except those used in consumer electronics that are rechargeable
- Electric Vehicles (EV) battery for e-rickshaws (three-wheelers), two-wheelers, and four-wheelers
- Automotive battery
- · Industrial battery

Tyre waste- Hazardous and Other Wastes (Management and

- New tyre
- Waste tyre

Extended producer responsibility – Illustrative industry or sector covered:



Plastic waste

- Fast Moving Consumer Goods (FMCG) - Milk packets, cooking oil in plastic bottles
- **Pharmaceutical** Capsules and tablets packed in plastic bottles
- Automobile Industries Car parts and other vehicle parts in plastic packaging
- Agriculture and **agribusiness** – Plastic packaging for seeds, fertilisers, etc.



Battery waste

- Consumer electronics Smartphones, laptops, tablets, cameras, etc.
- Automotive Electric vehicles
- Aerospace Aircraft, satellites, spacecraft
- Healthcare Medical devices such as pacemakers, hearing aids, and other diagnostic equipment
- Telecommunications Cell towers, base stations, and network equipment
- Renewable energy Solar power and wind power systems



E-waste

- IT and Telecommunication **equipment** – Computers, printer, telephone, router,
- Consumer electronics TV, refrigerator, AC, etc.
- Electronic equipment - Freezers, dish washers, microwaves, etc.
- Electronic Tools Drills, sewing machines, etc.
- Toys and sports Electric car racing sets, video games,
- Medical devices Cardiology equipment, ventilators, etc.



Waste tyre

- Transportation and **logistics** – Tyres of commercial trucks, buses, delivery vehicles
- Aerospace Aircrafts, smaller planes having landing
- · Automobile industries -Cars, bikes, bicycles, sports utility vehicles, etc.
- Heavy machinery and equipment - Bulldozers, loaders, mining trucks, etc.
- Agriculture Tractors, combine harvesters, etc.
- Maritime and boating industries - Boats, shipyard equipment, etc.

EPR coverage shall be critically evaluated and can be incidental to your business. Example: 10 kg of plastic shrink wrap will also trigger EPR compliance since there is no de-minimis rule.

Extended producer responsibility – What you need to do?

This is a general process for EPR, specific processes are defined in the SOPs issued by the MoEF under each of the waste management rules.



Ascertain applicability

- · Assess the role in the value chain, i.e., producer, importer, etc.
- Assess the coverage of the product under each of the rules set by MoEF



Registration

- importer, brand owner, or recycler at the Central Pollution
- Control Board



- Register as a producer,
- Each product category, i.e., plastics, batteries, tyres, and e-waste, has a separate portal for registration



Action plan and EPR Targets

- Provide an action plan containing information on the EPR target, category-wise, in case it is required
- EPR targets are specified for the products under the rules



Obtain EPR certificates

- Procure EPR certificates from recognised waste processors to fulfil EPR obligations
- Provide details of the recycling certificate only from registered recyclers



File returns

File an annual or quarterly return at the CPCB portal

Extended producer responsibility – Implications of non-compliance



Levy of environmental compensation by CPCB based on industrial pollution index



Reputational damage since environmental responsibilities are a priority



Bear the entire cost of waste management, including collection, recycling,



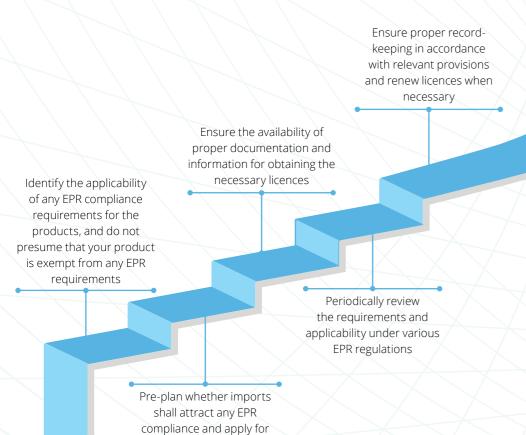


Create legal liabilities and penalties

Do you have a EPR registration?

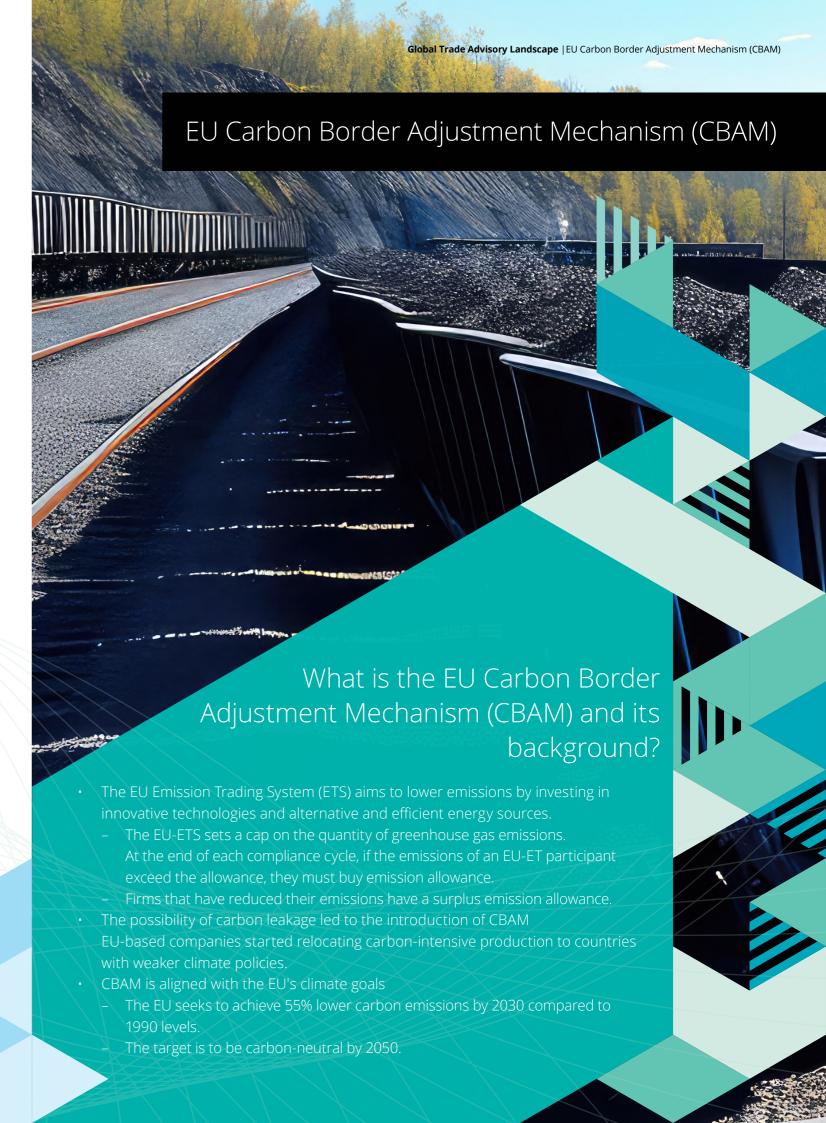


Things or steps you must consider for efficient EPR compliance

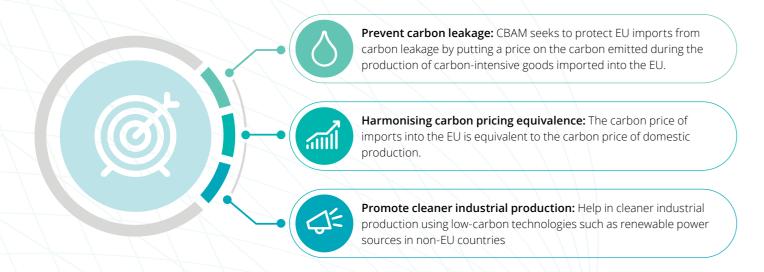


the same prior to imports to

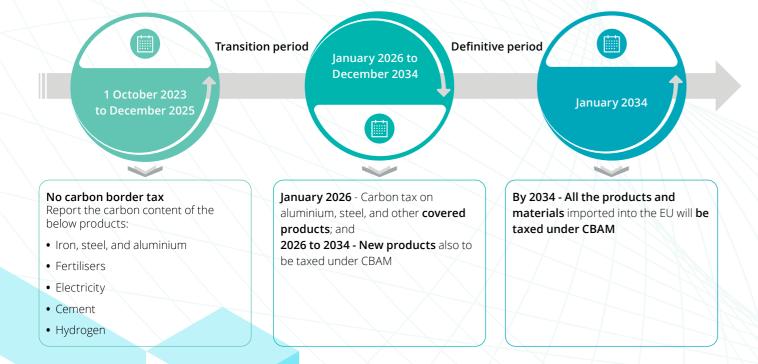
avoid cargo delays



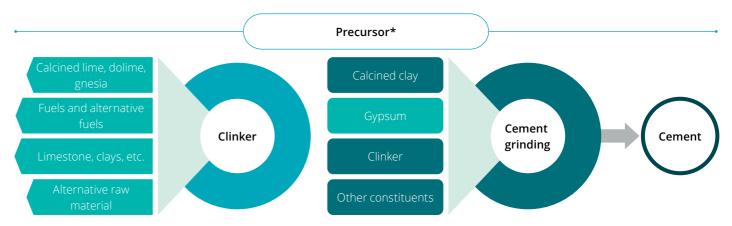
What is the objective of CBAM?



Phased rollout strategy for the implementation of CBAM



Illustrative example: Iron or steel production by blast furnace route

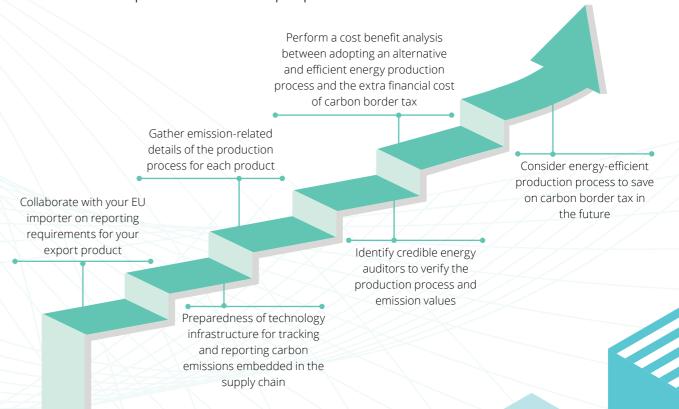


- Only input materials listed as relevant precursors to the system boundaries of the production process as specified in the Implementing Regulation are to be considered.
- Direct carbon emissions in the cement industry are those emissions that result directly from the chemical conversion of raw materials into clinker and the combustion of fossil fuels in the cement kiln.
- Indirect carbon emissions in the cement industry are those emissions that are associated with activities upstream and downstream of the cement manufacturing process, including the production and transportation of raw materials, energy production, and transportation of the finished cement product.

Some recent updates on CBAM

- Notification of default rates by the European Union: On 22 December 2023, the European Commission published "default values" for importers to use during the transitional phase of the EU's Carbon Border Adjustment Mechanism regime.
- The UK government announces the adoption of the Carbon Border Adjustment Mechanism (UK CBAM): The UK government has confirmed that it will implement a Carbon Border Adjustment Mechanism (CBAM) by 2027. The UK CABAM will apply a charge on the carbon emissions embodied in imports from the following sectors: aluminium, cement, ceramics, fertilisers, glass, hydrogen, iron, and steel. Consultation will take place on the design and mechanics of the UK CBAM in 2024

What Indian exporters must be prepared for?



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