

Chapter III: Policy implementation issues

3.1 As per paragraph 1.1 of HBP vol 1, DGFT notifies the schedule of DEPB rates. Further, as per paragraph 2.4 of FTP, DGFT may specify procedure to be followed for an exporter or importer or by any licencing or any other competent authority for purpose of implementing provisions of Foreign Trade (Development & Regulation) Act, the Rules and the Orders made thereunder and FTP. Such procedures shall be published by means of a PN, and may, in like manner, be amended from time to time.

DGFT in its reply (February 2014) stated that there was no dispute (subsidy cases) raised by WTO/bilaterally against India during the period 2005-06 to 2011-12.

However, the computation of DEPB as discussed in India's Trade policy review by WTO has been treated as counter-vailable and has been proceeded against by US, Canada and EU. The caselaws of Supreme Court (SC)/Central Excise Service Tax Administrative Tribunal (CESTAT) have touched various issues of policy misinterpretation and malfunction.

3.1.1 DEPB rates fixed without considering the actual incidence of duty resulting in excess duty credit

Rule 21 of General Financial Rules regarding Standards of Financial Propriety stipulates that *"every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety"*.

The DEPB rates for 2006-07 were announced vide PN. 29 dated 3 July 2006. During the year 2007, the peak rate of customs duty was reduced from 12.5 per cent to 10 per cent. However, DEPB rates announced for the year 2007-08 were increased ranging from one per cent to three per cent over the rate that existed during 2006-07. The main argument for increase in DEPB rate was that the exchange value of the Rupee had appreciated to an extent that the exporters were suffering hardship despite a decrease in customs duty. The Rupee had appreciated with respect to the US\$ from ₹ 44 in mid-March 2007 to just above ₹ 40 by mid-May 2007 and appreciated further to below ₹ 40 from September 2007 to the end of April 2008. However, the currency had thereafter weakened vis-à-vis the dollar, touching ₹ 51 in March 2009 and was in the range of ₹ 44-52 till the closure of scheme.

Though the increase in DEPB rates was approved for one year period only, the Department generalised the increase in rate which continued till closure of the scheme on 30 September 2011.

At the time of fixation of new DEPB rates for the year 2008-09, the issue of roll back of increment granted by DGFT was taken up by both the Directorate

of Drawback and the Department of Revenue. The Finance Minister, in his letter (October 2008) to the Commerce Minister stated that due to considerable depreciation in Rupee value there was an urgent need to adjust DEPB rates downwards to contain the unintended revenue outgo and exemption from customs duties also needs to be reflected DEPB rates of the downstream products. However, the same was not acceded to by DoC/DGFT at the time of fixation of new DEPB rates, with the result that the additional benefit due to the increase continued to be carried forward for the rates fixed for the year 2008-09 till the closure of the scheme (September 2011).

Thus, non-rollback had a cascading effect on the increment during 2009-10 to 2011-12, which resulted in extra duty credit of ₹ 11,361.32 crore (refer Appendix VI) allowed to exporters as detailed below:

Table: 5

DEPB rate during 2007-08 (average)(A)	6.00
Increased rate 2007-08 (average)(B)	2.39
% B of A	39.85

Table 6**Average rate of DEPB credit**

Year	DEPB credit	duty	FOB value of Export (₹ In crore)	Average rate
2005-06	5,010		1,10,267	4.54
2006-07	4,618		1,20,495	3.83
2007-08	5,496		1,25,183	4.39
2008-09	7,729		1,67,410	4.62
2009-10	8,267		1,68,044	4.89
2010-11	9,204		1,97,664	4.66
2011-12	11,165		2,50,532	4.46

DGFT in its reply stated (September 2013) that ad-hoc rates were revised for certain products in October 2007. Thereafter, DEPB rates were again revised on 5.11.2008. An extensive revision was undertaken in the year 2009 and the draft DEPB rates based on Customs duty (without ad-hoc increase in rates) were finalised. However, the same could not be issued in view of the decision taken by the Government to withdraw DEPB scheme in 2011.

DGFT further stated (February 2014) that the relief was provided based on the recommendation of various Committees including the Inter-Ministerial Committee and the Committee of Secretaries. Subsequently, to bring down the revenue implications at a level recommended by DoR, DEPB rates for a number of product were revised downwards w.e.f October 2007 and in annual DEPB exercise, DEPB rates for 1262 items were reduced and 26 items were increased w.e.f November 2008. DGFT further stated that due to slowdown on account of recessionary condition globally, DEPB rates applicable before November 2008 had to be restored w.e.f January 2009.

The replies furnished by DGFT in September 2013 and February 2014 are elusive. In September, DGFT stated that the revised rates could not be issued in view of the decision taken by the Government to withdraw DEPB scheme in 2011 and in February 2014 DGFT stated that due to global recession they had to retain the unrevised rates. However, the fact remain that non issue of revised DEPB rates finalised in 2009 resulted in extra expenditure of ₹ 11361.32 crore by the Government during April 2009 to September 2011.

Since the main objective of DEPB scheme was to neutralise incidence of customs duty on import content of export product and the formula for calculation of DEPB rate is independent of the currency rate, DEPB rates for the year 2007 should ideally have been reduced on account of decrease in rate of customs duty. However, the Department, instead of correlating DEPB rates with customs duty, linked the same with currency rate and recessionary trends. The methodology and calculation adopted to factor in the exchange rate fluctuation and recession was not produced to audit. The increase in DEPB rates without recalculating the incidence of duties, resulted in undue benefit to the exporters.

3.1.2 Undue benefit to the exporters by implementing the notification retrospectively

DEPB rates for the year 2006-07 and 2008-09 were announced by DGFT vide public notice no. 29 dated 3 July 2006 and 102 dated 5 November 2008 with a reduction in DEPB rates by one per cent to two per cent and one per cent respectively on account of reduction in customs duty from 15 to 12.5 per cent in 2006-07. The rates were applicable from the date of issue of PN.

However, DEPB rates for the year 2007-08 announced by DGFT vide PN 18 dated 13 July 2007 with an increment in DEPB rates ranging two to three per cent, were made applicable retrospectively from 1 April 2007, thereby extending undue benefit to the exporters to the tune of ₹ 618.26 crore as detailed below:

Table: 7

DEPB credit during 2007-08	₹ 5,498 crore
% Increment in DEPB rate	39.85
Extra benefit for the period 2007-08	₹ 618.26 crore *

*39.85% of 5498*103days/365days

DGFT, New Delhi stated (November 2013) that committee constituted in 2007-08 to consider impact of Rupee appreciation on export competitiveness, loss of export orders and likely job losses in different sectors expressed their view that there would be significant reduction in export and job losses if exporters forego booking of orders in the month of July, which may further lead to significant layoffs. Therefore, during the

meeting (25 June 2007) held between the then Finance Secretary, Secretary (Revenue) and Commerce Secretary, it was agreed that DEPB and duty drawback rates for select sectors had to be suitably adjusted as a matter of comfort and the public notice no. 17 was eventually issued on 12.7.2007 indicating therein new DEPB rates which were valid upto 31.3.2008. After issue of the PN, it was observed that the Ministry of Finance had revised the Duty Drawback rates as well as 2 per cent concession on pre-ship and post shipment credit effective from 1.4.2007 and accordingly with the approval of Commerce & Industry Minister, the public Notice No. 18 dated 13.7.2007 was issued to make the enhancement in DEPB rates effective from 1 April 2007.

The reply is not tenable as the Public Notice No. 18 issued on 13 July 2007 was made effective retrospectively from 1st April 2007 without referring to the Ministry of Finance, thereby extending undue benefit to the exporters.

DGFT justified (February 2014) the implementation of the notification retrospectively by reiterating the reasons furnished in their reply of November 2013. However, the reply is silent about implementation of the notification retrospectively without referring to the Ministry of Finance; neither could DGFT produce minutes of Empowered Committee meeting to audit.

3.1.3 Irregular fixation of DEPB rates without SIONs

Paragraph 4.38 of HBP vol 1 stipulates that all applications for fixation of DEPB rates shall be routed through concerned Export Promotion Councils (EPCs) which shall verify the FOB value of exports as well as international price of inputs covered under SION.

Audit scrutiny of the fixation of DEPB rates for the year 2007-08 revealed that DEPB rates for as many as 157 items in five product groups had been fixed without availability of SION. These items also enjoyed *ad-hoc* increase ranging from one per cent to three per cent. Since the inputs, as well as their share in the final product, and customs duties levied thereon cannot be worked out, it could not be ascertained as to how the Department had arrived at the average customs duty for the fixation of DEPB rates. It was also revealed that for the year 2008-09, DEPB rates had been fixed at previous year's (2007-08) rates for items for which SIONs have been deleted. Since no SION is available for these items, hence their continuation in DEPB schedule was irregular.

Department during fixation of DEPB rates (October 2008) admitted that in the product group 'Electronics' (Product Code 83), SION serial numbers against a number of DEPB entries could not be indicated by the Norms Committee since DEPB rates for these products were notified in 1997 and

were based on the Special Value Based SION (available till 1996-97). The DEPBB rates for these products were fixed on pro-rata basis against the last rates vis-à-vis the changes in the customs duty.

Due to failure to notify SION for the same and inability to work out correct DEPBB rates in the absence of relevant data for these items since 1996-97, loss to the exchequer on account of high DEPBB benefit cannot be ruled out. The arbitrary manner of fixation of DEPBB rates by the Department against the regulations was also against the policy provisions.

DGFT in its reply (February 2014) stated that SION provides details about the inputs and their quantity used in the manufacture of export product. The average customs duties applicable on the inputs along with value addition norms (wherever applicable) are thereafter taken into account to fix DEPBB rates. SION for "Electronics" (Product Code 83) was fixed under the Special Value Based Advance Licence Scheme (VABAL) which was withdrawn in 1997. DEPBB rates announced in 1997 and thereafter were based on those SIONs. With the withdrawal of Special value based scheme, the corresponding SIONs were withdrawn. Since the SION is only needed to ascertain the items of inputs and their quantity for fixation of DEPBB, subsequent DEPBB rates for those items were fixed based on prevalent rate of customs duties vis-à-vis the weightage indicated against the inputs as per earlier SION by DEPBB committee, in which the Department of Revenue and concerned administrative ministries/ departments are permanent members.

The fact remains that DEPBB rates were fixed arbitrarily in absence of relevant data and possible loss to the exchequer could not be ruled out.

3.1.4 Non-revision of value caps due to lack of trade data

DEPBB scheme, launched in 1997, was in continuation of VABAL. Most of DEPBB rates were set on the basis of VABAL rates. It was admitted by the Department (May 2003) that one of the factors affecting de-novo calculation of DEPBB rates is lack of data. Out of 2100 DEPBB rates, more than 60 per cent were calculated on the basis of the value addition that existed under VABAL scheme. For 40 per cent of the rates, which were calculated on the basis of actual data furnished by the industry, the re-calculation is difficult due to non-availability of current international prices of the export products and inputs. It was decided by Department to have contemporary trade data from EPCs to calculate actual DEPBB rates without issue of any PN to hide the facts that the Department had no data.

DEPBB rates fixed, without trade data, at the beginning of the scheme continued to be carried forward and value caps in respect of only those items were revised from time to time for which the exporter himself had furnished

import-export data through EPC. It was seen that no concrete effort had been taken by DGFT to get contemporary import-export data for annual revision of value caps. It was also noticed that no mechanism existed in DGFT to verify data submitted by industries through EPCs for revision of value caps.

Thus, the correctness of the value caps set by DGFT could not be ascertained and undue benefit to exporters on account of higher value caps could not be ruled out.

DGFT in its reply (February 2014) stated that value cap is imposed on the FOB value of the export product under DEPB scheme. Value cap was imposed on 485 items out of approximately 2150 items for which DEPB rates were prescribed. This was initially based on actual data furnished by the industry. In any case, if the value caps would have been revised, it is likely that the same would have had to be increased over time due to rise in FOB values of products which normally increase every year. Increase in value caps would have led to higher revenue outgo. There was therefore, no benefit to exporters on account of non-revision of value caps so far as DEPB scheme is concerned.

The reply furnished by DGFT appears to be presumptive and without empirical analysis. DGFT could not furnish any study report or calculations to substantiate their claim.

3.1.5 Variation in DEPB rates/value addition for the same product

Analysis of DEPB rates/value addition revealed that the Department had fixed different DEPB rates/adopted different value addition for the same product:-

Table: 8

Product code	Product Sl. No.	Name of product	Value addition	DEPB rates in per cent		
				2005	2006	2007
62	434	Refined glycerine	150 per cent	6	5	7
	525	Refined glycerine	125 per cent	7	6	8
62	265	Pigment yellow-12	400 per cent	3	2	4
	598	Pigment yellow-12	350 per cent	3	2	4
62	439	Trichloro Ethylene	225 per cent	5	4	6
	785	Trichloro Ethylene	275 per cent	4	3	5

Adopting different parameters for the same products reflects lacuna in the system for fixing DEPB rates.

DGFT in its reply (February 2014) stated that DEPB rates for various items were fixed based on prevalent rate of customs duties vis-à-vis the weightage indicated against the inputs as per SION and value addition. This was done by the DEPB committee in which the Department of Revenue and concerned administrative ministries/ departments were permanent members. Variation in rates could be a factor of different processing route or on account of

variation in purities of the finished product. When the SIONs were revised, removing the purity component of the finished product, the corresponding DEPB Rates were amended accordingly. However, wherever such duplications were detected, the same were rectified from time to time.

DGFT clarified that prior to 2003, there were two DEPB entries at Sl. No. 468 (Refined Glycerine 99 per cent purity minimum) and 565 for the Product Refined Glycerine (Refined Glycerine 99.5 per cent purity minimum) for Refined Glycerine. However, these entries were amended as Refined Glycerine for both Serial Nos. 434 and 525 with DEPB rates of 14 and 15 per cent respectively vide PN 62 dated 17.02.2003.

After detailed deliberations, DEPB Committee decided to recommend the case for deletion of DEPB entry at Sl. No. 434 of the Product Group 'Chemicals'. Accordingly, vide Public Notice No. 13 dated 13.10.2010 DEPB entry at Sl. No. 434 was deleted while maintaining the same DEPB rate for entry at Sl. No. 525.

The facts remain that two different DEPB rates for refined Glycerine continued upto October 2010 and no reply has been furnished for other products highlighted by audit.

3.2 DEPB *vis-à-vis* Duty Drawback Scheme

While DEPB scheme was operated by DGFT, the Duty Drawback scheme was administered by the Ministry of Finance. As per Ministry of Finance (Department of Revenue), CBEC Circular no. 42/2011-Cus dated 22 September 2011, with effect from 1 October 2011, DEPB items were incorporated into the Duty Drawback Schedule.

The Duty Drawback (DBK) scheme is a duty remission scheme and the rates for the Drawback scheme were calculated on the basis of actual inputs used in the manufacturing process.

A comparative analysis of Duty Drawback scheme and DEPB scheme, which was in operation till 30 September 2011, revealed that out of the 2131 items included in DEPB schedule, 1129 items were also in the Duty Drawback schedule. The number of items covered under Duty Drawback scheme was 2835 (approx.) before the closure of DEPB scheme and the same rose to 4000 (approx.) after incorporation of the DEPB items.

A comparison of rate of 1129 common items under both the duty remission schemes, when both the schemes were operational for the year 2010-11, revealed the following:-

Table: 9

Number of items where DEPB rate was more than DBK rate	1124
Number of items where DEPB rate was less than DBK rate	5

A comparison of Drawback rates for the year 2010-11 and 2011-12 in respect these above cited common items revealed the following:-

Table: 10

Number of items where DBK rates for 2011-12 were decreased w.r.t 2010-11	29
Number of items where DBK rates for 2011-12 were not changed w.r.t 2010-11	96
Number of items where DBK rates for 2011-12 were increased w.r.t. 2010-11	1004

Similarly, a comparison of the drawback rates for the year 2011-12 notified by Directorate of Drawback for these common items with the then existing DEPB rates revealed the following:-

Table: 11

Description	Common Items	New Items	Total	Percentage
Number of items where DBK rates for 2011-12 were decreased w.r.t existing DEPB rates.	1115 (Range 7.6-0.2)	997 (Range 1-9)	2112	99.11
Number of items where DBK rates for 2011-12 were not changed w.r.t existing DEPB rates	11	5	16	0.75
Number of items where DBK rates for 2011-12 were increased w.r.t existing DEPB rates	3 (Range 0.3 -2)	Nil	3	0.14
Total	1129	1002	2131	100

It clearly reflected that duty neutralisation in respect of 99.11 per cent of items (2112 items) under DEPB scheme was higher, ranging from 0.2 – 9 per cent. The Department of Revenue also held that DEPB scheme over compensated customs duties on export.

The proportionate excess revenue forgone on account of higher DEPB rates for these 2112 items for 2011-12 was to the tune of ₹ 5858.60 crore (56 per cent).

Cost benefit study on DEPB done by ICRIER⁵ calculated similar subsidy component in DEPB credits.

Table: 12

Average Rate under DEPB scheme for 2112 items (A)	5.98
Average DBK rate for 2112 items	2.58
Difference in Avg rate (B)	3.40
Total Revenue forgone during 2011-12 (C)	₹ 10,404.40 crore
Excess Revenue forgone on account of higher Average DEPB rate (C*99.11%*B/A)	₹ 5,858.60 crore

DoR in their reply stated (January 2014) that the decline in the rate for the erstwhile DEPB items on account of merger into drawback scheme reflects the broad policy principle of providing erstwhile DEPB items with drawback

⁵ Mukhpadhyaya, Sukumar, *Cost Benefit Analysis of tax exemptions for export promotion schemes*, ICRIER, 2007

rates equivalent to DEPB rate less the extraneous elements in DEPB rate. The reduction in rates on erstwhile DEPB items has been continued in subsequent AIR drawback schedules till 2013-14.

DGFT in its reply (February 2014) stated that DEPB and Duty Drawback Scheme cannot be compared in terms of the inherent principles of the schemes. Duty Entitlement Passbook Scheme was primarily formulated to neutralize the customs duty on the deemed import content of the export product. While Duty Drawback Scheme is based on different principles which take into account certain averages. However, for some products the Duty Drawback Rates might have been higher on account of the specific rate of Duty Drawback for some products whereas it is falling under the residual rate of DEPB and in certain cases value addition under DEPB scheme was higher to reduce revenue implication.

Reply of DGFT is not acceptable as the analysis done by Audit in 2112 products revealed that DEPB rates were fixed at higher rates which were not commensurate with the actual incidence of duties and included other considerations as well, which resulted in excess revenue forgone of ₹ 5,858 crore in 2011-12. Without the mechanism for verification of PMV of Shipping Bill in EDI system (paragraph 2.5.1), cases of upwardly loaded DEPB scrips at inflated export price could not be ruled out.

3.3 Trade analysis of CECA Singapore

The Comprehensive Economic Cooperation Agreement (CECA) between India and Singapore came into force on 1 August 2005, after 26 months of negotiation. It was the first comprehensive trade agreement India signed with any trade partner as part of Government of India policy of market expansion. The main objectives of India-Singapore CECA were to strengthen and enhance the economic, trade and investment cooperation between the Parties, to liberalise and promote trade in goods; to liberalise and promote trade in services in accordance with Article V of the General Agreement on Trade in Services, including promotion of mutual recognition of professions; to improve the efficiency and competitiveness of their manufacturing and services sectors and to expand trade and investment between the Parties, including joint exploitation of commercial and economic opportunities in non-Parties etc.

DEPB scheme was set to close by March 2002 amidst vigorous questioning of India's Trade Policy by WTO and disputes with EU, USA and Canada. A new scheme was being explored by DoC. Given the slow progress in Doha rounds of WTO negotiation, comprehensive bilateral FTAs and RTAs (SAARC, ASEAN) were engaged in. CECA, Singapore was negotiated in this background. The

revealed competitive advantage and trade advantage of India computed for this agreement included trading advantage to the Indian exporter as a result of the extant FTP and DEPB in specific.

DoC in its Strategic Plan claimed that, working out conducive trading arrangements with trading partners holds a crucial place in the entire strategy of export promotion. The efforts towards successful conclusion of FTAs with important partners would receive utmost attention. Similarly, one of the objectives in RFD of DoC was implementation of trade facilitating measures to improve trade environment for accelerating growth of exports.

Peak rate of customs duties in India has been 10 per cent since FY08. DEPB was under sporadic extensions. Worldwide recession started from 2008-09. DEPB was completely phased out from September 2011. In the table below the year-wise details of import under PTA-CECA Singapore, during 2005-06 to 2012-13 clearly indicates the events.

Table: 13

(₹ In crore)

Year	Assessable Value of imports	Growth per cent	Duty Payable	Duty Forgone	Value of Export	Growth per cent
2005-2006	743.04	-	119.79	101.54	24019.65	--
2006-2007	1,633.37	1.19	350.18	241.48	27461.61	4.80
2007-2008	2,020.26	0.23	389.85	293.74	29662.23	4.52
2008-2009	3,299.58	0.63	625.11	437.58	37756.88	4.49
2009-2010	3,274.58	-0.01	419.11	470.19	35948.30	-4.25
2010-2011	4,823.31	0.47	679.94	617.18	44731.73	3.91
2011-2012	5,191.11	0.07	701.95	783.42	80362.99	5.48
2012-2013	6,245.30	0.20	1,031.51	695.19	73994.97	4.52
TOTAL	27,230.54	0.40 (Avg)	4,317.45	3,640.32	3,53,938.40	3.35 (Avg)

Source: Department of Revenue, Ministry of Finance

An analysis of data furnished by DoR, Ministry of Finance revealed that total amount of duty forgone on import under CECA Singapore for the year 2005-06 to 2012-13 was ₹ 3,640.32 crore against import of ₹ 27,230.54 crore with staggered growth of 0.40 per cent after signing the agreement. Out of the total duty forgone 26.6 per cent duty incentive was availed by five importers namely M/s Supreme Chemicals, M/s BASF India Ltd., M/s LG Polymers India Pvt. Ltd, M/s C.J. Shah & Co. and M/s Jesons Industries Ltd. to the tune of ₹ 968.35 crore. Export grew at a much higher rate of 4.7 per cent. Further, on comparing the data of DoC with the data of DoR, it has been observed that the duty forgone in the year 2009-10 and 2011-12 is more than the duty payable. Therefore, the correctness of the data maintained by these two departments could not be assured.

Percentage of duty forgone under Section 25(1) of the Customs Act, 1962 for other than scheme based exemption was 145 per cent of the Customs receipt during FY12. Crude and mineral oils, diamond, gold, machinery etc contributed 88 per cent of the revenue forgone.

Regarding exports under CECA-Singapore, from the data available with DoC, it was observed that during the period 2005-06 to 2012-13, export of ₹ 3,53,938.40 crore with annual growth of 3.9 to 5.5 per cent and import of ₹ 27,230.54 crore forgoing ₹ 3,640.32 crore were made. Generally, all goods imported into Singapore are subject to GST payment for non dutiable goods and GST and/or duty payment in the case of dutiable goods. Intoxicating liquors, tobacco products, motor vehicles and petroleum products are dutiable goods and *all* other products are non dutiable. From the value of export for year 2011-12 (₹ 80,363 crore - Table 12) and the average higher rate (3.4 per cent – Table 11) offered under DEPB scheme for 2112 items duty scrips worth ₹ 2,732 crore could be generated for exports made to a zero duty destination. This amount has 56 per cent of the component beyond the taxes neutralised. In addition, due to lack of PMV verification the export value itself could be on the higher side. ₹ 2732 crore worth scrips can be used to pay any imports through any port. Citing cases of misuse (as seen through an analysis of ICES 1.5 data), the import with poor RSP (retail sale price) validation could further cause private profit and duty forgone for Government.

It is interesting to note that barring a few finished products like needles for injection, syringes etc., most of the items imported under preferential tariffs under the India-Singapore CECA (Appendix VIII) are in the nature of raw materials or intermediates for use by the domestic manufacturing industry. It is also interesting to note that except for needles for injection, butanoic acid and alkylphenols, none of the other items imported under preferential terms constitutes more than 10 per cent of our global imports. It would therefore be safe to assume that these preferential imports would have had little impact on the domestic manufacturers of similar products.

The report of the XII Plan Working Group on 'Boosting India's Manufacturing Exports' observed that ambitious Comprehensive Economic Co-operation Agreement (CECA) sought deeper market access for achieving economic objectives and increased market access. CECA Singapore has been in force long enough to make a meaningful assessment of the import they have on manufacturing sector. The report further states that:

"...while it is still too early to assess the exact impact our RTAs would have in accelerating our exports of manufactured goods, the preferential market access under these RTAs would definitely contribute beneficially – the extent

of such contribution would emerge after these RTAs run their course of full implementation. Of course, one would still need to establish a causal link between any such increase and the preferential market access under the RTAs. The multilateral trade liberalisation efforts under the WTO would have little impact on our domestic manufacturers in terms of increased competition since we would still have sufficient water between our applied and bound tariffs. Sectoral commitments would have an impact. However, sectoral commitments are voluntary and we would only undertake commitments taking our domestic sensitivities into consideration. The multilateral liberalisation could have a beneficial impact on our manufactured exports as tariffs of the developed economies are expected to be significantly reduced from their present levels. Such reductions would present opportunities for enhanced market access as well as opening of new markets”.

DGFT in its reply (February 2014) maintained that there is no linkage between the imports being effected from a country and exports taking place to different countries for the purpose of availing DEPB benefit. Moreover, as stated earlier, DEPB scheme is based on deemed import content of the export product and hence there is no co-relation of duty concession availed under FTA vis-à-vis benefit available under DEPB Scheme for any export.

The reason why it was decided to look at CECA Singapore is because incentives that accrue to the exporters/importers through FTP schemes and the incentive accruing because of the PTAs are closely connected. It requires precise measurement of the gains to the exporters and manufacturers to design trade facilitations at the ports and infrastructure for the domestic Industry lest it is misdirected and misused jeopardizing trade or economic growth, which are the ultimate strategic goals of DoC/MoF.

The purpose of this analysis by audit was to draw attention to the outcome analysis of FTP schemes such as DEPB which operates in the environment of PTAs that India is engaged in with different countries. XII Plan Working Group of DoC also noted that for growth, competitiveness, infrastructure and facilitation is required rather than subsidising.

3.4 Excess import against export resulted in excess outflow of foreign exchange

As per paragraph 4.37 of HBP vol 1, 2009-14, duty credit under the scheme shall be calculated by taking into account deemed import content of said export product as per SION. Value addition achieved by export of such product shall also be taken into account while determining the rate of duty credit under the scheme. DEPB scheme does not provide for any restriction

on value of import against any scrip, restriction was limited to the value of the scrips.

Audit observed that in 68 cases at 3 RAs at Ahmedabad, Mumbai and Kolkata, imports worth ₹ 145.54 crore were made using DEPB scrips issued against exports of ₹ 105.58 crore, leading to excess outflow of foreign exchange from the country. DEPB scheme did not have any check to ensure that the foreign exchange outflow did not exceed the inflow or in other words the CIF value of imports was not more than the FOB value realized on export.

The data provided, generated through EDI system at the RA, Bhopal showed only DEPB debits and not the total debits (i.e cash payment, EPCG payments etc) against those Bills of Entry. In the absence of total debits, corresponding CIF values could not be ascertained. DGFT, Bhopal intimated that no such information was available with them.

Analysis of all India trade ICES 1.5 data made available to audit also revealed that only DEPB debits were recorded against the BE in the system and not transmitted to DGFT from Customs.

On this being pointed out (June/July 2013), the Dy. Commissioner of Customs, Customs House, Kandla and Pipavav replied (July 2013) that while utilising DEPB licence, the duty credit available in DEPB licence was utilised and not the CIF value.

DGFT did not review the online data received from Customs Department and modify data requirement on EDI module to ensure compliance to policy provisions.

DoR in their reply stated (January 2014) that if requirement for additional data fields is indicated by DGFT, the feasibility of providing it can be examined.

DGFT in its reply (February 2014) asserted that outflow of foreign exchange is not linked with the scheme and clarified that the exporter is free to import anything against DEPB scrip. There are chances that the firms can import goods having low customs duty against DEPB scrip obtained on the basis of export with higher DEPB rates. Outflow of foreign exchange is not linked with the scheme.

DGFT further stated that the duty credit under DEPB Scheme is for the basic customs duty component of the export product. Here the duty credit is in lieu of the cash payment. Hence, under DEPB scheme, the linkage of utilization of DEPB scrip to that of the any limit on the CIF value of imports to that of FOB value of exports is not required. However, prior to 2002 when the facility of exemption from the Special Additional Duty (SAD) component

was available on clearance of consignment against DEPB without the requirement of debit of DEPB amount for the said component of SAD, it was necessary to limit the CIF value of imports maximum up to the FOB value of exports of the product against which DEPB has been issued.

DGFT also stated that Special Additional duty was withdrawn after 2002 and was reintroduced in 2004. The Special Additional Duty used to be debited from DEPB credit allowed in the scrip at the time of clearance of the consignment and no exemption of Special Additional duty against DEPB was allowed since then. Hence, the clearance against DEPB scrip became similar to clearance of the consignment against payment of duty in cash. Hence, the earlier requirement of limiting the CIF value of import up to the FOB value of export product against which DEPB scrip was issued was no more relevant and hence, the provision was deleted with the consent of DoR in 2004.

Reply of DGFT is not acceptable. Now since SAD is reintroduced (2004), DGFT could have made provision to refund the SAD in Indian rupee to prevent the excess outflow of foreign exchange as augmentation of foreign exchange is one of the objectives of the FTP. In addition, to analyse the foreign exchange earnings of this scheme at a macro level it is important to capture the available data by the RAs and correlate it to the different export/import products and destinations.