

## **NOTE ON FTA BENEFITS**

Free Trade Agreements (FTAs)/Preferential Trade Agreements (PTAs)/Comprehensive Economic Partnership Agreement (CEPA)/Comprehensive Economic Cooperation Agreements (CECA), whatever names you call it, provides basically market access by providing preferential tariff rates on negotiated items, when they are imported from a member country. Such preferential treatment is subject to compliance with Rules of Origin (ROO).

### **Basic Elements of FTAs**

#### **▶ Preferential tariff rate (concessional or zero duty)**

- Preferential Treatment is provided on negotiated items and not on all imports.
- Only Basic Customs Duty (BCD) is reduced to provide preferences under FTAs/PTAs/CECAs/CEPAs.
- Concessions/exemptions from Additional duties of Customs are not granted under FTAs/PTAs/CECAs/CEPAs.
- Tariff lines requiring protections are generally included in Exclusion or Sensitive lists. Sensitive Lists cover items with specific rate of duty which will not be further eliminated. Exclusion List includes items which will not be considered for tariff elimination under FTAs/PTAs/CECAs/CEPAs.
- The tariff lines are generally negotiated based on following criteria:
  - 1) Those items on which India will reduce BCD to “zero” either immediately or in installments
  - 2) Duties would be reduced but will not be made “zero” either immediately or in installments
  - 3) Items which are subjected to fixed schedules
  - 4) Items where no concessions would be offered and no request entertained
- Each country of regional trade pact would therefore have their tariff schedules under the respective FTAs/PTAs/CECAs/CEPAs. Such tariff schedules covers negotiated tariff lines with the details on what kind of tariff preferences given by member country to each of the tariff line, whether the products is under sensitive track or not, whether the products is excluded, i.e. not to be considered by member country under respective FTAs/PTAs/CECAs/CEPAs.

#### **▶ Rules of Origin (ROO)**

- Important to determine national source of product.
- Can be determined based on following criteria:
  - *Wholly Produced* –Goods must be wholly produced / obtained in member country – non originating materials are not used.
  - *Partially Produced* –When non-originating materials are used upto certain percentage.
- Value addition to be achieved

- Total cost element including materials, labour, profit etc. in the country of origin. This applies to partially produced goods.
- Change in HS Code at 6 digit level.
  - this criteria is applied to deny preferential duty benefits on traded goods of other origin

▶ **Definition of process of manufacture**

- Simple processes and operations such as cutting, mixing, change of packing, simple assembly are not considered as “manufacturing processes/operations”. Rules of Origin (ROO) prescribed under each FTA/PTA/CECA/CEPA provides list of such operations.

▶ **Cumulative Rules of Origin**

- The value addition can be achieved cumulatively by doing various manufacturing processes in countries belonging to the group.
- For example, a product can be considered as of Thailand Origin where partial manufacturing processes are carried out in Indonesia/Malaysia etc. all countries being member countries of ASEAN.

▶ **Most favoured nation (MFN) treatment**

- The standard rate of duty or basic customs duty which is equally applicable on imported goods from other WTO member countries.

The importer and exporter therefore must have knowledge of

- 1) If importing into India from FTA member country
  - a. Correct HS Classification and description of import product – this is very crucial important as tariff lines under FTAs/PTAs/CECAs/CEPAs are negotiated based on HS Classifications and descriptions given thereunder. India, HS Classifications are to be determined based on ITC (HS) Classification for Export and Import Items [ITC (HS)].
  - b. Basic Customs Duty (BCD)
  - c. General Exemption from BCD under Cus. Ntno No. 12/2012 dtd. 17.03.2012
  - d. Tariff preference provided under respective FTAs/PTAs/CECAs/CEPAs – this is generally provided in Customs Notifications issued by the Department of Revenue. Latest Customs Notifications which provides list of items with concessional BCD/zero BCD are given in the below table:

Customs Notification No. and date	Particulars.
58/2015-Cus, dt. 30-12-2015	Seeks to further amend notification No.

	46/2011-Customs dated 01.06.2011 so as to provide <b><u>deeper tariff concessions in respect of specified goods when imported from ASEAN countries</u></b> under the India-ASEAN Free Trade Agreement w.e.f. 01.01.2016
59/2015-Cus, dt. 30-12-2015	Seeks to amend notification No. 53/2011-Customs dated 01st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the <b><u>India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA)</u></b> w.e.f. 01.01.2016.
60/2015-Cus, dt. 30-12-2015	Seeks to amend notification No. 152/2009-Customs dated 31.12.2009 so as to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the <b><u>India-Korea Comprehensive Economic Partnership Agreement (CEPA)</u></b> w.e.f. 01.01.2016.
28/2016-Cus. dt. 31-03-2016	Seeks to amend Notification No. 69/2011-Customs, dated 29th July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported under the <b><u>India-Japan Comprehensive Economic Partnership Agreement (IJCEPA)</u></b> , w.e.f. 1st of April, 2016

- e. Rules of Origin (ROO) prescribed under respective FTAs/PTAs/CECAs/CEPAs. These are provided by respective Customs Notifications, list of which is given hereunder:

<b>Customs Notification No. and date</b>	<b>Rules of Origin (ROO) under</b>
Cus. Ntn No. 189 (NT) Dtd. 31.12.2009, effective from 01.01.2010, as amended.	India-ASEAN Free Trade Agreement
Cus. Ntn No. 43 (NT) Dtd. 01.07.2011, as amended	India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA)
Cus. Ntn No. 187 (NT) Dtd. 31.12.2009, as amended	India-Korea Comprehensive Economic Partnership Agreement (CEPA)
Cus. Ntn No. 55 (NT) Dtd. 01.08.2011, as amended	India-Japan Comprehensive Economic Partnership Agreement (IJCEPA)

- 2) If exporting from India to FTA member country
  - a. Basic Customs Duty charged by importing member on product exported from India. Basic Customs Duty (BCD) is also known as MFN Rate/ Base Rate/ Standard Rate or Standard Customs Duty in other countries.
  - b. Tariff preferences provided by member country for such products exported from India.
  - c. Rules of Origin (ROO) – Since tariff preferences will be provided only if exporter in India provides Certificate of Origin (COO) under relevant FTAs/PTAs/CECAs/CEPAs to importer in member country. This can be learnt from the above mentioned customs notifications related to Rules of Origin (ROO).
  - d. Other FTAs/PTAs/CECAs/CEPAs negotiated by RCEP members with other nations (other than India).

When India receives tariff preference for its exports, India has to give tariff preference to its FTA partners as well. If India allows items without payment of duty under FTAs/PTAs/CECAs/CEPAs, it may result into injury to domestic industry hence it is essential for all industry members to provide proper and accurate data. This is because, when FTAs/PTAs/CECAs/CEPAs are under negotiation, one can make representation based on evidences of such injury.

On the export side, if the item is put in exclusion list or sensitive track by member countries then Indian products will not get tariff preference and hence they become uncompetitive to that extent if the member nation provides zero duty access to the same product to its other FTA partners.

It is therefore very essential for all members to help PHARMEXCIL to conduct comprehensive analysis which will be able to highlight whether import of particular products should be restricted by including the same under India's Exclusion List or provide minimum duty rates by including under sensitive tracks. Not only this, it enables Pharmaindustry to analyze whether there is probable threat or opportunity if import of certain products is allowed at zero duty under RCEP.