

No.14/5/2016-EOU
Government of India
Ministry of Commerce & Industry
Department of Commerce

Udyog Bhawan, New Delhi
Dated 24 October, 2016

OFFICE MEMORANDUM

Subject: 5th Meeting (2016 series) of the Board of Approval (BOA) for EOU Scheme scheduled to be held on 3rd November, 2016 – forwarding Agenda reg.

The undersigned is directed to forward herewith a copy of Agenda Items for the 5th (2016 series) of the Board of Approval for EOU Scheme scheduled to be held on 3rd November, 2016 at 11:00 A.M. in Room No. 47 Udyog Bhawan, New Delhi under the Chairmanship of Commerce Secretary.

2. May kindly make it convenient to attend the Meeting.



(G. Srinivasan)

Under Secretary to the Government of India

Tel: 23062496

E-mail: Srinivasan.g@nic.in

1. D/o Industrial Policy & Promotion.
2. CBEC [Member (Customs)], M/o Finance.
3. CBDT [Member(Income Tax)], M/o Finance.
4. DG, DGFT.
5. The Joint Secretary, M/o Environment & Forest.
6. The Joint Secretary, M/o Science & Technology.
7. M/o Micro, Small and Medium Enterprises.
8. All DCs.

Copy to: PSO to CS/PPS to AS(AVC)/PS to Dir (TVR)/PA to Dir (AK)

AGENDA FOR THE 5th BOA MEETING (2015 SERIES) FOR EOU SCHEME TO BE HELD ON 03.11.2016 AT 11.00 A.M.

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5.1 (16) Confirmation of Minutes of the 4th BOA (2016 Series) meeting held on 12.08.2016.

5.2(16) M/s Mylan Laboratories Ltd., Telangana- Proposal for conversion of a DTA unit into an EOU under VSEZ.

M/s Mylan Laboratories Ltd. has submitted application for conversion of its DTA unit into an EOU at Medak District, Telangana for manufacture and export of Active Pharmaceuticals Ingredients (APIs) and Drug Intermediates (as per list enclosed) with ITC HS Code under Chapter 29.

The unit has informed that their EPCG obligation is 'Nil' and Advance Authorization liability is Rs. 74 Crores (approx).

The Exports for the existing unit:

(Rs. In Crores)

Year	Exports
2014-15	118.50
2015-16	207.50
2016-17 upto July, 2016	61.00

The investment in Plant and Machinery is:

(Rs. In Crores)

	Existing	Proposed	Total
Imported	66.05	14.96	81.01
Indigenous	99.07	9.97	109.04

Proposed NFE is: Rs.1070.74 Crores.

Relevant provision of FTP:

Para 6.07 (d) of FTP, 2015-2020 provides that applications for conversion into an EOU/EHTP/STP/BTP unit from existing DTA units, having in **investment of Rs. 50 crores and above in plant and machinery or exporting Rs. 50 crores and above annually**, shall be placed before BOA for a decision.

DC's Recommendation: DC has recommended the proposal of unit for conversion of existing DTA unit into an EOU.

5.3(16) M/s. Stellis Biopharma Private Limited, an EOU under CSEZ – Proposal for import/procurement of Modular Panels/Laboratory Furniture without payment of Central Excise duty.

M/s. Stellis Biopharma Private Limited (100% EOU) holds Letter of Permission dated 14.03.2016 for manufacture and export of Biopharma Drug Product, Biopharma Drug Substance, Pharmaceutical formulation vials, Pre Filled Syringes, Cartidges The unit has not commenced commercial production.

The unit has made a request to import/local procurement of duty free Modular Panels/Laboratory Furniture (Clean Room Facility and Laboratory Furniture)

The unit intend to build a sterile block in their bonded ware house as per CGMP (*Current Good Manufacturing Practice regulations* enforced by the US Food and Drug Administration) standard & it is a requirement for pharmaceutical company. Modular Panels/modular constructed Biopharmaceutical area is critical requirement and the said pre-engineered structure/insulate modular walls/panels made of aluminium sandwich construction filled with either polypropylene honeycomb or with foam which ensures the CGMO standards & Clean room as essential requirement for a pharmaceutical company.

Value of the clean room facility (Modular Panels) is **Rs. 15.00 Crores (Rs. 2 crore approx. duty foregone).**

Value of the laboratory furniture is **Rs. 20.00 Crores (Rs. 5.60 cr. Approx. duty foregone)**

Relevant provision of FTP: Para 6.04 of HBP 2015-20 provides a list of various types of goods permitted to be imported/procured from DTA. Para 6.04 (f) provides that any other items not mentioned in 6.04(a) to 6.04 (e) can be procured with the approval of BoA.

Any other information, which may assist BOA in the matter: In a similar Case, the BOA for 100% EOUs in its 3rd meeting (2010 series) held on 13.07.2010 has approved the proposal of M/s. Strides Arcolab Limited, Bangalore.

DC's Recommendation: DC has recommended that the unit may be allowed to import/procure Modular panels/Laboratory Furniture to build sterile block in their bonded ware house (Clean Room Facility and Laboratory Furniture) without payment of Central Excise Duty.

5.4(16) M/s Nektar Therapeutics (India) Pvt. Ltd. and M/s Shantha Biotechnics Pvt. Ltd., EOUs under VSEZ – Proposal for procurement of restricted items viz., Mice, Rats and Guinea Pigs duty free.

M/s Nektar Therapeutics (India) Pvt. Ltd. was issued LoP on 07.02.2005 for R&D services for pharmaceuticals and bio-technology products. M/s Shantha Biotechnics Pvt. Ltd. was issued LoP on 30.05.2007 for vaccines research, manufacturing and marketing.

The units are importing live animals viz., Rats, Mice and Guinea Pigs to carry out their approved activities after obtaining import authorization from DGFT.

The units have mentioned that the duty free procurement is not being allowed by the jurisdictional Customs and Central Excise authorities on the ground that the unit has to obtain prior approval of the Board of Approvals in terms of Para 6.04 (f) of HBP, 2015-20 read with Sl. No. 17 of Annexure I to the Customs Notification No. 52/2003-Cus dated 31.03.2003 which requires the Authority granting permission for such importation to obtain prior approval of the Board of Approvals.

It is further mentioned in the proposal that in terms of Para No. 6.01(d) of FTP 2015-20, the unit is eligible for procurement of goods for its operations provided they are not prohibited items and rats/mice/guinea pigs are restricted items only and not prohibited items.

The units have been obtaining import authorization from DGFT as required for import of restricted items, the permission letter of DGFT is silent about the duty component.

Relevant provision of FTP: Para 6.04 of HBP 2015-20 provides a list of various types of goods permitted to be imported/procured from DTA. Para 6.04 (f) provides that any other items not mentioned in 6.04(a) to 6.04 (e) can be procured with the approval of BoA.

Any other information, which may assist BOA in the matter: In a similar Case, the BOA for 100% EOUs in its 3rd meeting (2014 series) held on 18.09.2014 has approved the proposal of M/s. Advinus Therapeutics, an EOU under SEEPZ for duty free import of laboratory animals – rats and mice subject to provisions contained in FTP and DGFT licence and other applicable laws/regulations such as CITES and Wild Life Protection Act.

DC's Recommendation: DC has recommended that the units may be allowed to make duty free import of these animals after obtaining necessary import authorization from DGFT.

5.5(16) M/s Mahi Granites Pvt. Ltd., an EOU under VSEZ – Permission for procurement of duty free PEB structures.

M/s Mahi Granites Pvt. Ltd. was issued LoP on 10.11.2015 for setting up of 100% EOU at Telangana for manufacture and export of quartz surface slabs. The proposal of the unit for procurement of "Pre-Engineering Building (PEB) Structure" as a part of Plant and Machinery under the exemption category was considered by BoA in its meeting held on 23.02.2016 and BoA made the following observation on the proposal:

"The Board deliberated on the request of M/s Mahi Granites Pvt. Ltd., an EOU under VSEZ for procurement of duty free PEB structures. DGEP pointed out that goods used for construction of building or civil structure or parts thereof under Central Excise Law, are, neither covered under definition of capital goods or inputs. Therefore, EOUs are not allowed duty free inputs used in civil structure. In view of the concern raised by DGEP, the Board decided to defer the request of the unit and directed DC, VSEZ to examine

the precedents if any where BoA granted approval for similar requests and if necessary resend the proposal accordingly”.

DC, VSEZ has mentioned that while recommending the proposal the said unit for consideration by BoA in its meeting held on 23.02.2016, the office of DC, VSEZ relied on the decision of BoA taken in its meeting held on 13.03.2012 in the case of M/s Pilkington Automotive India Pvt. Ltd., which was recommended in terms of Para No. 6.5.1(f) of HBP 2009-14 read with S.No. 28 of the Annexure-I to Notification No. 22/2003-C.EX dated 31.03.2005, any item in relation to production of export goods may be allowed duty free procurement with the prior approval of BoA.

However, in pursuance of direction given by BoA in its Meeting held on 23.02.2016, the issue was re-examined by DC, VSEZ and it is found out that BoA in its Meeting held on 06.07.2012, indicated that approval given to M/s Pilkington Automotive India Pvt. Ltd. for procurement of PEB structure should not be cited as precedent.

Now, the unit has made the following submission to DC, VSEZ:

- i. Any slab containing any spots arising out of contamination in the process are rejected for export and will have to be sold as scrap.
- ii. It is very important to keep the entire manufacturing process in a dust free environment and also install dust collectors at every stage of processing. Any contamination caused by dust or environment will result in defective quality.
- iii. PEB structure is a pre-requisite from imported machinery suppliers to enforce warranties on the machinery imported and also to get approvals from the overseas customers, when they visit the factory for sample approvals.
- iv. The y also have to construct laboratory in the plant for product development in controlled temperature conditions.
- v. The PEB structure is used for the manufacturing processing area only and storage, office premises are not covered under PEB structure.
- vi. PEB structure cannot be considered or categorised as construction material because a PEB structure is specially designed, custom made and erected consisting of columns, purling, Galvaluminium sheeting material, as per the specific needs of the project.
- vii. It was held by several tribunals and courts that building which houses manufacturing plant is to be treated as Plant since the plant itself could not survive independent of the building.

Relevant provision of FTP: Para 6.04 of HBP 2015-20 provides a list of various types of goods permitted to be imported/procured from DTA. Para 6.04 (f) provides that any other items not mentioned in 6.04(a) to 6.04 (e) can be procured with the approval of BoA.

DC's Comments: Considering the decision of BoA in its meeting held on 06.07.2012 in the case of M/s Pilkington Automotive India Pvt. Ltd, DC has requested BoA to take a decision with respect to the request of the unit for duty free procurement of PEB structure under the category of Plant and Machinery.

5.6(16) M/s Venture Metal Products (P) Ltd., an EOU under MEPZ – Proposal for Renewal of LoP.

The proposal of M/s Venture Metal Products P. Ltd for renewal of LoP was considered by BoA in its meeting held on 12.08.2016 and BoA made the following observation on the proposal:

"After deliberations, the Board decided to defer the proposal of M/s Venture Metal Products (P) Ltd, an EOU under MEPZ for renewal of LoP and directed DC, MEPZ to re-examine the proposal in consultation with Central Excise Authorities on the issue of payment of applicable duties by the unit, if any".

DC, MEPZ has resent the proposal with below details:

(i) M/s Venture Metal Products Pvt. Ltd., have been issued LOP dated 19.5.2004 for setting up a 100% EOU for manufacture and export of Table Kitchen, Coffee Machine and other House Hold Articles made of Stainless steel. The company commenced commercial production on 10.08.2004. The Company manufactured the above goods and exported it to European market. During the manufacturing process it was found by the company that they were incurring extra wastage over and above the SION Norms fixed to their product. The company has applied for revision of wastage norms for their product. Accordingly DC, MEPZ fixed ad-hoc wastage norms of 46.74% vide letter dated 26.07.2005 based on the recommendations of SISI, Guindy, Chennai.

(ii) The proposal for regularisation of adhoc-wastage norms fixed by DC, MEPZ and fixation of regular wastage norms in respect of M/s Venture Metal products Pvt. Ltd. was placed in the 5th Meeting (2006 Series) of BOA held on 16th November, 2006. (Agenda Points 5.38(06)). The Board decided to let the norms fixed by the DC continue till finalisation of regular norms by the O/o DGFT.

(iii) DGFT in their letter dated 19.10.2006 communicated that for company the export products "Coffee filter/Coffee/Tea Kettle/Pot of shape other than rectangular or Square", the SION for the subject product exists in the SION at Sl. No. C-832 of Engineering Product. Since the ad-hoc norms fixed to the company was not regularised by DGFT, New Delhi, and as it was not viable to the company to manufacture the above product without extra wastage, which they were incurred in their production process, they decided to exit from EOU status. The company first applied for issue of in-principal exit to MEPZ. the performance of the company (for the first five year period from 2004-05 to 2008-09 was reviewed and they achieved positive NFE of Rs. 3141.90 Lakhs) for the second five year period from 11.8.2009 to 30.09.2013 (Block year period 2009-10 to 2013-14) was reviewed and the unit was imposed a penalty of Rs. 50000/- for non-achievement of positive NFEE during the said period vide Order-in-Original dated 13.01.2014. The unit paid the penalty of Rs. 50000/- vide challan dated 14.02.2014 under protest.

(iv) As requested by the company issue of in-principle exit (NOC letter) from EOU status to M/s Venture Metal Products Pvt. Ltd. was kept pending since the regularisation of adhoc norms was not communicated to the office of DC, MEPZ by DGFT, New Delhi. Therefore a reminder letter was issued by DC, MEPZ to DGFT on 30.07.2014.

Thereafter DGFT communicated copy of letter dated 19.10.2006 vide their letter dated 24.11.2014. In the meantime M/s Venture Metal Products Pvt. Ltd. re-applied to DGFT, New Delhi. Thereafter DGFT ratified their order dated 19.10.2006 in the Meeting No. 22/81 dated 9.2.2016 of Norms Committee-II for the year 2015-16. After the ratification/modification of wastage norms for their product as 48.12%. M/s Venture Metal Products Pvt. Ltd. informed that their product is viable for export market and decided to continue as EOU Unit. Since they had submitted revival of their unit, their proposal for continuance of EOU status was placed in the 4th Meeting (2016 Series) of BoA held on 12.08.2016.

(v) It is pointed out that, since in-principle exit order (NOC for exit from EOU status) was not issued to M/s Venture Metal products (P) Ltd., they have not exited from EOU Status. DGFT, New Delhi ratified their order dated 19.10.2006 in the Meeting No. 22/81 dated 9.2.2016 of Norms Committee-II for the year 2015-16 and the wastage norms for their product was ratified as 48.12%. Therefore, the payment of Central Excise duties by the company does not arise. M/s Venture Metal Products Pvt. Ltd. have informed that since product is viable for export market and have decided to continue as EOU unit and applied for renewal of their LOP for the third five year period from 11.08.2014 to 10.08.2019.

(vi) Since the validity of LOP in the second five year block period was expired on 10.08.2014 and the company has applied for renewal of LOP for third five year period from 11.08.2014 to 10.08.2019 after completion of six months period from the expiry date of LOP, their proposal of LOP renewal of LOP is being placed in BOA in terms of Para. 6.01(i) of FTP 2015-2020.

Relevant provision of FTP/HBP:

As per para 6.01(i) of HBP 2015-20, where units give their option to continue after six month of completion of approval period, DC will grant extension after approval of BOA.

DC's Comments: The proposal of M/s Venture Metal Products Pvt. Ltd., a 100% EOU for renewal of their LOP for the third five year block from 11.08.2014 to 10.08.2019 after lapse of 23 months is placed before BOA for approval in terms of Para 6.01(i) of HBP 2015-2020.

5.7(16) M/s SMC Medical Manufacturing Private Limited, an EOU under CSEZ – Proposal for permission to do trading activities

M/s SMC Medical Manufacturing Private Limited, an EOU, Bangalore holds LOP dated 21.05.2007 (as extended) for manufacture and export of All Kind of Plastic & Plastic Goods Including Industrial Components & Parts & All Kinds of Assemblies and Sub Assemblies of Electrical, Electro-Mechanical, Electronics & Medical Device Products, Equipments etc. The unit has commenced commercial production w.e.f. 31.08.2007.

The unit has received an order for development and manufacture of a complex disposable medical device to be used in the treatment of diabetes. The first phase

includes product development, trials, verification, validation and pilot production. The development activities will happen across multiple locations globally. In the second phase, the unit will get orders for manufacture and supply of this device.

The following is the flow chat of operation.

- i. Customer will place an order to the M/s SMC India for making a die.
- ii. M/s SMC will place an order on M/s SMC US (parent company) for making the die and M/s SMC US will in turn place order on the supplier for making the Die. This is because M/s SMC US has prelateship with the US supplier and M/s SMC US would also be able to oversee the development and manufacturing activity on behalf of M/s SMC India.
- iii. The supplier will make the die and invoice M/s SMC US. The supplier will retain the die for subsequent manufacture and supply of components made by using that die. The components will be supplied to the US customer or M/s SMC US for development activities. Finally the parts manufactured by the die are supply to the SMC India during commercial production.
- iv. M/s SMC US will invoice M/s SMC India and in turn M/s SMC India will invoice the customer.
- v. The end customer will pay M/s SMC India, M/s SMC India will pay M/s SMC US and M/s SMC US will pay the supplier. All transactions will be in US Dollars.
- vi. The dies would be returned to M/s SMC India only on completion of the project or when the life of the die is over whichever is earlier.

Performance for the unit (cumulative for the first two years) is Rs. 21.45 crores.

The unit approached Policy Relaxation Committee of DGFT and O/o the DGFT has instructed to approach BOA in this regard since recommendation of BOA is required for such Policy Relaxation.

The provisions of FTP/HBP as cited by DC, CSEZ is Para No. 6.04 of HBP 2015-20 which provides a list of various types of goods permitted to be imported/procured from DTA. Para 6.04 (f) provides that any other items not mentioned in 6.04(a) to 6.04 (e) can be procured with the approval of BoA.

Relevant provision of FTP/HBP:

As per para 6.00(a) of FTP 2015-20, Trading units are not covered under EOU Scheme.

DC's Comments: DC has recommended that the unit may be allowed above mentioned multiple transactions in development phase of the project.

PART II

**Approval granted by Development Commissioner Under Delegated Powers for
RATIFICATION OF BOA as per Press Note No. 3 of 1995**

A	Approvals granted under delegated powers for the period July, 2016 to September, 2016	KASEZ
B	Approvals granted under delegated powers for the period April, 2016 to September, 2016	SEEPZ
C	Approvals granted under delegated powers from June, 2016- NIL	FSEZ
D	Approvals granted under delegated powers for the period of May, 2016 to June, 2016	MEPZ
E	Approvals granted under delegated powers from August, 2016 to September, 2016 - NIL	VSEZ