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Analysing developments impacting business

IMPORT POLICY AMENDED | RESTRICTIONS ON IMPORTING LAPTOPS, TABLETS, AND PERSONAL COMPUTERS FROM 1 NOVEMBER 2023

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The Import Policy vis-à-vis imports of laptops, tablets, personal computers and other 'automatic data processing machines' have been amended and from 1 November 2023, imports of these items will be subjected to mandatory import restrictions, necessitating a valid licence for imports, except in a few specified cases.

Background

Under the provisions of the Foreign Trade Policy (FTP), imports into India are regulated and for certain goods, a mandatory requirement of a specific license issued by the Directorate General of Foreign Trade (DGFT) is prescribed under the Schedule I of the Import Policy.

Generally, controls and restrictions are of 4 categories: (i) 'Prohibited' - Import of items not permitted; (ii) 'Restricted' - Import of items permitted under an Import Licence / Authorisation / Permission granted by the DGFT. Application for import of 'Restricted' items may be made in ANF 2B, as per details policy / procedure prescribed; (iii) 'STE' - Import of items allowed only through specified State Trading Enterprises (STEs) subject to specific conditions laid out in the Foreign Trade Policy; and (iv) 'Free' - Import of items which do not require any Licence / Authorisation / Permission from the DGFT.

Amendment by DGFT

By Notification no-23/2023 dated 3 August 2023 (Notification) read with Notification no-26/2023 dated 4 August 2023, the DGFT has introduced Policy Condition No. 4 in Chapter 84 of the Import Policy, whereby imports of items such as laptops, tablets, all-in-one personal computers, ultra small form factor computers, servers and other 'automatic data processing machines' under HSN 8471, with effect from 1 November 2023, will be permitted only where a license is issued to the Importer, subject to certain exemptions.

Previously, the policy condition for such imports was 'free' and did not require any license from the DGFT.

The exemptions provided under Notification from such licensing requirement are as under:

- For import of 1 (one) laptop, tablet, all-in-one personal computer, or ultra-small form factor computer, including those acquired from e-commerce platforms, through post or courier;
- Up to 20 such items per consignment can be imported without an import licence for the purposes of research and development, testing, benchmarking and evaluation,

repair and re-export, as well as product development. However, it is imperative that the imported goods are utilized strictly for the stated purposes and are neither sold nor used for other commercial activities within the country;

Laptops, tablets, personal computers, ultra-small form factor computers, and servers, which are essential components of a capital good, will be exempted from the import licensing requirements;

- This licensing restriction shall not be applicable to imports under Passenger Baggage Rules, as amended from time to time;
- Where such goods are being re-imported after being repaired abroad in conformity with Para 2.28 of the FTP, licence shall not be required;

Comment

This may be viewed in the backdrop of impetus from the Government of India is to Production Linked Incentive (PLI) Scheme for IT products; the said restriction is probably aimed at stimulating manufacturing and investments into India as well as local capacity building since there has been a significant rise in imports of the covered items into India. The said restriction is likely to impact several companies in this space offering their products in India through imports.

The Government had previously taken steps to boost domestic production of mobile phones by imposing higher import tariffs. While the imports of the goods covered under the restriction are duty-free, the restriction is probably aimed at potential import substitution and optimal utilisation of the PLI scheme in the sector.

As per news reports, 'national security' concerns also played a role behind this move – out of the total imports of US\$ 8.8 billion in financial year 2022-23 of the subject products, almost 60% were imports from China.

Given that this new Policy Condition leads to restricted market access for imported goods and significant license-based conditions, it may be argued as not being in conformity with the principle of 'national treatment' under the WTO or other permissible trade barriers. Considering the potentially prohibitive impact of the restrictions on global players to continue operations into India through imports and the outcome of the recent WTO dispute concerning ITA goods, the possibility of legal challenges to these restrictions at a bilateral or WTO level cannot be ruled out. It may however be noted that 'national security' has been frequently used (and accepted) as a justifiable exception vis-à-vis such trade restrictive measures.

Further, since this import restriction is to take effect from 1 November 2023, there will be a transitional period for suppliers to build on stocks and also clear goods which are enroute to India.

At this point, the conditions, criteria and time-limit for issuance of such import license is not clear. Affected entities should commence preparing for changes in their internal systems and import processes keeping in mind this upcoming disruption while also considering review of the potential impact on their supplies and possible mitigation steps.

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