The Pakistan Business Council
FOSTERING ECONOMIC GROWTH
(A Company set up under Section 42 of the Companies Ordinance 1984)

November 10th, 2023

Ms. Suraiya Ahmed Butt
Member (Customs-Policy)
Federal Board of Revenue
FBR House
Islamabad

Dear Ms. Butt

SUBJECT: DRAFT SRO 1517(I)/2023 PROPOSING AMENDMENTS TO EXPORT FACILITATION SCHEME [EFS]

This letter is with reference to DRAFT SRO 1517(I)/2023 dated November 2, 2023 whereby various amendments to Customs Rules, 2001 Export Facilitation Scheme (EFS)] have been proposed for comments from stakeholders.

2. PBC appreciates the overall amendments proposed vide above referred SRO, however, at the same time, we would like the FBR to reconsider the following proposed amendments:

(i) Rule 872(a) has been proposed to be amended as follows [amendment has been highlighted in Red]:

> ***"872. Scope of the scheme.*** *— (1) This scheme shall be available to the following persons subject to authorization of import, warehouse and purchase of input goods under these rules and registration in the WeBOC or PSW:*
>
> (a) *persons registered under the Sales Tax Act, 1990, as manufacturer-cum-exporter, who make value-addition in the manufacture and export of goods, which shall not be less than ten per cent* ***in USD terms****;"*

PBC's Comments and Recommendation: Considering the recent unprecedented increase in Electricity / Gas prices coupled with overall reduction in margins [due to slowdown in global economic activities], value addition of 10% and that too in USD terms might not be possible in each and every case. Due to cyclical movement [commodity cycle], goods are sometimes exported at a very low margin or even at a loss in order to retain a customer. Therefore, proposed amendment to assess value addition in USD terms be deleted. Moreover, the Rule should be amended to make it clear that the assessment of 10% value addition will be made on annual basis, otherwise, the Custom department may take a view that this assessment is required for each consignment.

(ii) Following sub-rules 3 and 4 have been proposed to be added to Rule 897:

> *"(3) The user shall arrange or install at his premises such online automated system to record and display details of input goods, manufactured goods and output goods exported or supplied to another user or vendor besides inventory position on daily basis as may enable the Regulatory Collectorate to monitor all the activity being done by him.*
>
> *(4) The Regulatory Collectorate shall be responsible for overall monitoring the scheme."*

PBC's Comments and Recommendation: Similar Rule was also part of the EOU Rules, however, the same was never implemented due to practical issues in its implementation. The mere addition of this rule thus, won't serve any practical purpose. In order to avoid any issue, the proposed amendment should be deleted and the same should only be considered for implementation after thorough discussions with all stakeholders including the PBC.

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3. In addition to above, we would like to thank you for considering our proposals for effective utilization of EFS and incorporating some of our proposals in the above referred draft SRO.

We would however, like to highlight that many proposals, which the PBC has been discussing with the FBR, and on which there was broad agreement, have still not been incorporated vide the Draft SRO.

(i) **Annexure A** - Representing Annexure to our letter dated April 28, 2022 identifying proposals which have been incorporated and those which have not been incorporated; and
(ii) **Annexure B** – Representing Annexure to our letter dated August 21, 2023 identifying proposals which have been incorporated and those which have not been incorporated; and

The PBC would request detailed consideration by the FBR of PBC's recommendations for improving the EFS.

We are available for any interaction that your office might require for further discussions on the proposals.

Thank you and warm regards

Samir S Amir
(DIRECTOR RESEARCH)

Cc:
Mr. Amjad Aman – Secretary, Exports Policy

Encl.

Annexure A - Annexure to our letter dated April 28, 2022 identifying proposals which have been incorporated and those which have not been incorporated; and

Annexure B –Annexure to our letter dated August 21, 2023 identifying proposals which have been incorporated and those which have not been incorporated

ANNEXURE A: Annexure to Letter dated April 28, 2022					
Old S. No.	**New S. NO**	**Issue**	**Recommendation**	**Impact**	**DRAFT SRO 1517 dt. November 2, 2023**
1.	1.	**Definition of Input Goods** Definition of Input Goods as provided in clause (m) of Rule 871 of the Rules is comprehensive whereas the same needs to be specific to cover export purposes only.	It is proposed that changes highlighted as red should be made in the definition of input goods below; *"input goods" means goods whether imported or procured locally under these Rules and includes services eligible for acquisition. Such "import" includes the purchase of input goods from a Common Export House or from the licensees of S.R.O 450(0/2001, dated the 18th June, 2001, Chapter XV, DTRE or S.R.O. 327(0/2008, dated the 29th March, 2008, used in the manufacture of output goods, as approved in the analysis certificate."*	Considering the fact that the manufacturer registered under export promotion schemes would be purchasing other goods (by paying duty and taxes) for production and local supply therefore, the definition needs to be more specific to cover goods only which have been acquired under the schemes for export purposes only.	This proposal has not been incorporated. Collector Karachi, vide his letter dated 13-09-2022 addressed to the then Secretary (Exports Policy), has also supported this proposal for clarity
2.	2	**Scope of Scheme** As per clause (a) of Rule 872 of the Rules, persons registered under the Sales Tax Act, 1990, as manufacturer-cum-exporter, who make value-addition in the manufacture and export of goods, which shall not be less than ten per cent, may register under the instant	Therefore, it is proposed that following changes highlighted as red in clause (a) of sub-rule (1) of Rule 872 of the Rules be made; *"(a) persons registered under the Sales Tax Act, 1990, as manufacturer-cum-exporter,*	This will facilitate the user of the scheme.	This proposal has not been accepted rather the requirement for value addition has been linked US Dollars.

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		scheme. Considering the fact that the exporter will have to retain its export market share therefore, based on the fluctuations in prices, sometimes he may have to sell with value addition of less than **prescribed limit of 10%.**	*who make value-addition in the manufacture and export of goods, which shall not be less than ten per cent on an aggregate annual basis."*		
8.	3	**Security instrument for authorization** Applicant is required to submit security instrument as prescribed in the Rule 876 of the Rules.	Following changes highlighted as red should be made in clauses (a), (b), (c), (d) & (e) of sub-rule (1) of Rule 876; (a) Category A: Indemnity bond as set out in Appendix-III and PDC or an undertaking stating that "PDC equivalent to the value of duties and taxes applicable on import of goods shall be submitted at the time of clearance of goods from Customs or within 15 days of local procurement, whichever is applicable"; (b) Category B1: For manufacturer cum exporters with a self-owned manufacturing facility, Indemnity bond as set out in Appendix-III ~~and PDC~~ or	It is recommended that exporters should be given an option to furnish either insurance guarantee or **bank guarantee** as per their convenience. Moreover, submission of PDC equivalent to total expected import value may result in harassment / coercive action by total encashment of PDC even incase of minor outstanding dues, therefore, PDC should be provided as and when goods are imported / locally purchased.	This proposal has not been accepted. Collector Karachi, vide his letter dated 13-09-2022 addressed to the then Secretary (Exports Policy), has also supported this proposal for clarity

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			an undertaking stating that "PDC equivalent to the value of duties and taxes applicable on import of goods shall be submitted at the time of clearance of goods from Customs or within 15 days of local procurement, whichever is applicable" ~~for manufacturer cum exporters with a self-owned manufacturing facility~~ For Manufacturer-cum- exporters with a rented production facility, Revolving Insurance Guarantee or Bank Guarantee covering their annual requirement, ~~for Manufacturer cum exporters with a rented production facility;~~ (c) Category B2: Revolving Insurance Guarantee or Bank Guarantee for manufacturers with self-owned manufacturing facility covering their annual requirement, Revolving Bank Guarantee for manufacturers with rented production facility covering their annual requirement till three years benchmark is crossed and graduating to Bi category; (d) Category C1: Indemnity Bond as set out in Appendix-Ill		

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			and PDC duly endorsed by the bankers or Revolving insurance guarantee for manufacturers with self- owned manufacturing facility for authorization to the extent of average export value of past 3 years and Revolving Insurance Guarantee for authorization beyond the average export value for manufacturers with self-owned manufacturing facility and manufacturers with rented production facility and commercial exporters, covering their annual requirement; and (e) Category C2: Revolving Insurance Guarantee or Bank Guarantee for manufacturers with a self-owned manufacturing facility and Revolving Bank Guarantee for manufacturers with rented production facility and commercial exporters, covering their annual requirement till three years benchmark is crossed and graduating to C1 category.		
10.	4	**<u>Improved / lowered efficiency</u>** At present, there is no provisions for declaration of improved	Rule 877(4) should be amended as follows to cater for change in		This proposal has not been accepted.

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		efficiency ratio due to production efficiency which should be incorporated in the instant scheme.	IOR due to improved / lowered efficiency: "(4) *In case the application has new input goods or output goods, or the applicant claims that there is change* in *the Input out ratio already determined due to any change in technology, or the improved or lower efficiency of the manufacturing process, the Regulatory Collector shall refer the case to the Directorate General of IOCO or the EDB as the case may be immediately after receipt of the application, for determination of the Input-Output ratios within thirty days of the receipt of the application, showing the actual quantity of input goods used and wastages occurred in the manufacture of one unit of output goods. A new Analysis Certificate shall be issued and uploaded in the WeBOC OR PSW system by the Director IOCO:* *Provided that the exporters falling under "category A" can apply to the Regulatory Collector, within seven days of the import of the goods or sixty*		

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			days before the first export of the output goods, for issuance of analysis certificate if not issued already, showing the input and output ratio of input goods vis-a-vis finished goods along with wastages in the prescribed format. *Provided that In case of improved efficiency, the input or output ratio for the subsequent period shall be amended in accordance with the newly established input or output ratio provided that the improvement is beyond one per cent. If the change in input or output ratio is within one per cent, the input or output ratios shall remain unchanged but the excess materials shall be declared by the licensee to the Customs every year.* *In the case of lower efficiency, and the lower efficient ratio is beyond three per cent the unit may apply for redetermination of IQRs. If the change in input or output ratio is within three per cent, the input or output ratios shall remain unchanged.*		

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13.	5	**<u>Penal Action against non-declaration of input goods - Rule 880(4)</u>** As per Rule 880(4), EPS user *shall be **liable to suspension or cancellation** of the authorization besides any other action as provided under the law,* incase it is found out that the information, that was required to be uploaded in WeBOC or PSW regarding acquisition of goods by the user, has not been uploaded in time.	Suspension and cancellation of the authorization appears to be an extremely harsh measure considering the fact that there can be chances of human error / mistakes resulting in failure in uploading of requisite information. In such cases, penal action involving monetary impact may be levied on user instead of suspension or cancellation, which must only be triggered incase there are sufficient evidence that the default was willful. Consequently, Rule 880(4) be amended as follows: (4) In case it is found out as a result of any information, audit, or snap checking ordered by the Regulatory Collector, the information that was required to be uploaded in WeBOC or PSW regarding acquisition of goods by the user, has not been uploaded in time due to human error or mistake, the user shall be liable to: ~~suspension or cancellation of the authorization besides any~~	To avoid suspension / cancellation of authorization due to genuine mistake or human error and to allow extreme action only in case of intentional default.	This proposal has not been accepted. Collector Karachi, vide his letter dated 13-09-2022 addressed to the then Secretary (Exports Policy), has also supported this proposal for clarity

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			~~other action as provided under the law.~~ (a) Payment of revenue loss caused to the Government alongwith default surcharge @ 15% and penalty of Rs. 15,000, incase first default in a year (b) Payment of revenue loss caused to the Government alongwith default surcharge @ 25% and penalty of Rs. 45,000, incase of all subsequent default(s) in a year Provided that incase it is proved with sufficient documentary evidence that non provision of information was willful or intentional, in addition to recovery under clauses "a" and "b" above, the user shall also be liable to suspension or cancellation of the authorization		
14.	6	**<u>Utilization Period</u>** Existing utilization period for different categories of exporters as per Rule 883 of the Rules are too long.	It is suggested that utilization period for different categories of exporters should be as follows:	Such amendments would rationalize the utilization period.	Partially Accepted. Utilization period for C1 and C2 has been reduced down to 24 months and 12 months respectively.

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			Category-A [36 ~~60~~ Months] *Category-Bi [36 ~~48~~ Months]* *Category-B2 [24 Months]* *Category-Ci [6 ~~48~~ Months]* *Category-C2 [6 ~~24~~ Months]*		
16.	7	**<u>Domestic Sales</u>** As per Rule 886 of the Rules, user shall be allowed to sell factory rejects or B grade goods in the domestic market on payment of leviable duty and taxes if any on filing of a Goods Declaration which shall be assessed as if the goods are imported into Pakistan in that condition.	Following changes highlighted as red should be made in sub-rule (1), (2) and (3) of Rule 886; *"(1) A user shall be allowed to sell up to 20% of the output goods manufactured from input goods in the domestic market on payment of leviable duty and taxes on filing of a Goods Declaration which shall be assessed ~~as if goods are imported into Pakistan in that condition~~ on the basis of input goods consumed against such sales, subject to satisfaction of the Regulatory Collector regarding reasons for domestic sale.* *(2) In case the user is unable to export the output goods and desires to sale output goods exceeding the percentage given in sub-rule (1) in the domestic market, he may sale them in the*	Since this is being allowed on goods manufactured from input goods acquired free of tax and duties therefore, it is suggested that specific reference against disposal in local market of goods produced from input goods should be inserted. This amendment would avoid any ambiguity in the said Rule.	This proposal has not been accepted.

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			domestic market subject to payment of duty and taxes on filing of goods declaration which shall be assessed ~~if goods are imported in Pakistan in that condition and~~ on the basis of input goods consumed against such sales subject to the satisfaction of the Regulatory Collector. In addition, surcharge at the rate of KIBOR plus 3% per annum shall also be charged on the value of input goods used in the output goods being sold in the domestic market under this sub rule. *(3) The user shall be allowed to sell factory rejects or B grade goods in the domestic market on payment of leviable duty and taxes if any on filing of a Goods Declaration which shall be assessed ~~as if the goods are imported into Pakistan in that condition.~~" on the basis of input goods consumed against such sales. In addition, surcharge at the rate of KIBOR plus 3% per annum shall also he charged on the value of input goods used in the output goods being sold in the domestic market under this sub*		

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			rule.		
17	8	**<u>Unused input goods due to improved efficiency</u>**	Proviso should be added after clause c of rule 1 of 887: *Provided that incase of unused input good due to improved efficiency, no surcharge KIBOR plus 3% will be applicable in case of disposal of unused input goods in the domestic market*		This proposal has not been accepted.

ANNEXURE B: Annexure to Letter dated August 21, 2023				
S. No.	**Existing Situation**	**Proposed Amendment**	**Rationale**	**Draft SRO 1517 dt. November 2, 2023**
1	EFS users falling under category C1 with self-owned manufacturing facility and more than 3 years of history are allowed to submit Post dated cheques [PDC] as security instrument against authorization	It is therefore proposed that authorization on the basis of PDC should be restricted to the extent of average export history of past 3 years. For any authorization above that average, 3rd party security instrument should be sought. Moreover, for both Categories C, in order to avoid misuse / fake security instruments, a revolving insurance guarantee, wherever applicable should be sought from category AA++ rated insurance companies. The following amendments therefore need to be made in Rule 876: **Category C1**: Indemnity Bond as set out in Appendix-III and PDC *duly endorsed by the bankers or Revolving insurance guarantee* for manufacturers with self-owned manufacturing facility *for authorization to the extent of average export value of past 3 years* and Revolving Insurance Guarantee for *authorization beyond the average export value* for *manufacturers with self-owned manufacturing facility and* manufacturers with rented production facility and commercial exporters, covering their annual requirement;	There are apprehensions regarding blanket authorization on the basis of PDC as it is feared that this may result in misuse / fraud resulting in loss of Government revenue.	This proposal has not yet been incorporated
2.	In addition to duties, sales tax and income tax, Common Export House under the EFS has even been allowed exemption from value addition sales tax.	In order to avoid misuse of EFS facility, value addition sales tax @ 3% [which is collected from commercial importers at import stage] be collected at import stage from Common Export House to avoid loss of tax revenue in case of any evasion by Common Export	The Government collects value addition sales tax @ 3% on import by commercial importers to account for the potential revenue loss due to	This proposal has not yet been incorporated

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	Moreover, as per the existing law, Common Export House is not allowed to procure locally from domestic market.	House. Consequently, following amendment be made in Rule 871 (g): g) "**Common Export House**" means a warehouse authorized by the Collector under this chapter, for import *or procured locally*, warehouse and supply of input goods without payment of customs duty, sales tax, federal excise duty and withholding tax, to the small and medium export enterprises, direct or indirect exporters or commercial exporters; *Provided that Common Export House will be liable to pay, at the time of import, Value addition sales tax under section 7(2) of the Sales Tax Act, 1990* An amendment needs to also be made in the definition of Exports and Indirect Exporter in rule 871 (k) and (l) as follows: *"export" includes supply of goods, -* *(a) by an indirect exporter to a direct exporter or Commercial Exporter or Common Export House;* *"indirect exporter" means a person who has a firm contract or export purchase order from a direct exporter or commercial exporter or Common Export House for the manufacture and*	under-invoicing / misdeclaration.	

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		supply of goods to such exporter authorized under these rules;		
3.	As per Rule 883, utilization period of input goods has been provided for various categories of EFS users wherein 48 months and 24 months have been allowed to categories C1 and C2 respectively.	In order to avoid potential misuse of imported duty / tax free goods by categories C1 and C2, utilization period should be reduced down to 6 months.	Existing timeline appears to be extremely high and may result in misuse.	Partially Accepted. Utilization period for c1 and c2 has been reduced down to 24 months and 12 months respectively.
4.	As per Rule 893, timelines for audit have been prescribed for various categories of EFS users wherein audit timeline for Category C is 3 years.	Audit timeline for category C be fixed to once in a year from existing once in every three years.	To keep strict vigilance and to avoid chances of misuse.	Instead of Category C, audit requirement for all new entrants has been fixed to every year for 1st 3 years.
5.	As per existing Rules, goods imported by Common Export House, which are prone to misuse, are not specifically identifiable for use only under EFS	2nd proviso to Rule 899(2) be included as follows so that when supply of goods is made, it is evident that these goods are only for use under EFS: *Further provided that the input goods imported by Common Export house should be stamped as "Import for export purposes only under EFS Rules"*	To avoid chances of misuse by supply of input goods into the local market by Common Export House	This proposal has not yet been incorporated

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6.	As per Rule 891, the user is entitled to refund of sales tax on the acquisition of tax paid input goods including refund of Sales Tax on electricity or gas or services utilized as input goods for the manufacture of output goods to be exported under these rules, as admissible under the Sales Tax Act 1990.	It is proposed that instead of refund mechanism being cumbersome and time consuming, EFS users be allowed zero rating on utilities on the basis of ratio of export to total sales of last completed financial year. Any change in ratio during the ongoing year will not result in any revenue loss as sales tax is otherwise adjustable / refundable.	To promote ease of doing business and to avoid blockage or working capital.	This proposal has not yet been incorporated
7.	As per Rule 874 (iii), Category C has been defined in EFS rules for Indirect exporter, commercial exporters and international toll manufacturers. The EFS module does not allow international toll manufacturing to manufacturer cum exporters falling under category A & B because the EFS system has been developed in such a way to restrict one category against one NTN only.	it is suggested that rules should be amended to allow international toll manufacturing for such exporters under any of the category subject to fulfilment of conditions under Rule 885. Moreover, the EFS system should also be configured to allow filing of goods declaration for international toll manufacturing for all categories. Consequently, following proviso be added at the end of Rule 874: *Provided that manufacturers-cum-exporters falling either under Category A or B, who are also engaged or intends to engage in International toll manufacturing, may carry out such international toll manufacturing on the basis of authorization under either of the category A or B subject to fulfilment of conditions specified under Rule 885*	Practically, manufacturer-cum-exporters under category A & B can also do international toll manufacturing.	This proposal has been accepted.
8.	Existing EFS Rules only allow single stage supply from indirect exporter to direct exporter, however, there may be a situation where multiple interlinked processes are performed	EFS license should be issued to complete chain of exports. Indirect Exporters should be allowed sales to another EFS registered indirect exporters so that complete chain till Direct Exporter is covered.	Example: In order to manufacture garment, there are multiple interlinked processes like spinning, weaving, dyeing, finishing,	Partially accepted. Phrase "commercial exporter" has

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	by multiple manufacturers to manufacture a final exportable product.	Consequently, following amendment be made in the definition of Exports in Rule 871(1)(k): "export" includes supply of goods,— (a) by an indirect exporter to *another indirect exporter or* a direct exporter *or Commercial Exporter or Common Export House*; (b) to projects or sectors entitled to import or purchase such goods free of duties and taxes; and (c) to export processing zones, and Gwadar free zone Consequently, definition of Indirect Exporter under Rule 871 (l) should also be amended to cover manufacturers in indirect supply chain for exports: "Indirect exporter" means a person who has a firm contract or export purchase order from a direct exporter or commercial exporter *or Common Export House* for the manufacture and supply of goods to such exporter *and includes another indirect exporter in the supply chain for exports* authorized under these rules.	etc. There are situations where multiple EFS users are involved in carrying out each of these processes, however, existing Rules do not cater this situation.	only been added whereas "Indirect Exporter and Common Export House" have not been added.
9.	Import under EFS is subject to determination of Input Output Coefficient [IOCO ratio] by the Regulatory Collector or the Director	In order to resolve this issue, application for determination of IOCO ratio by EFS users falling under category C must only be approved by the concerned authority after getting the same vetted by local	To avoid misuse of EFS Scheme due to liberal IOCO ratios.	This proposal has not yet been incorporated

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	of Input Output Coefficient Organization [IOCO]. IOCO ratio is used to determine the quantity of input goods to produce / manufacture specific quantity of output goods, therefore, liberal determination of IOCO ratio [as against the actual applicable ratio] may result in extreme misuse of EFS resulting in illegal / unwarranted supply of input goods in local market.	manufacturers of such product for which IOCO ratio is sought to be approved. Consequently, following proviso is proposed to be added to Rule 877(9): *"Provided that an application for determination of IOCO by users falling under Category C shall be approved by the Director IOCO only after getting the said ratios vetted by local manufacturer. Incase of any difference in IOCO ratios applied by the applicant and the ratios provided by the manufacturer, the same shall be finalized by the Director IOCO after providing an opportunity of being heard to the applicant in a joint meeting with manufacturer."*		