

REPLIES TO QUESTIONNAIRE ON IMPORT LICENSING PROCEDURES¹

Notification under Article 7.3 of the Agreement
on Import Licensing Procedures

INDIA

The following notification², dated 31 March 1999, has been received from the Permanent Mission of India.

Outline of the system

1. One of the main objectives of the present trade policy of the Government of India is to phase out quantitative and licensing controls regulating India's foreign trade. Keeping this objective in view, the current Export and Import Policy (Exim Policy) has been announced by the Government on 31 March 1997, valid for a period of five years from April 1997 to March 2002.

In terms of Export and Import Policy for 1997-2002³, all capital goods, raw materials, intermediates, components, consumables, spares, parts, accessories, instruments and other goods may be imported without any restriction except to the extent such imports are regulated by the Negative List of Imports or any other provisions of this policy or any other law in force.

The Negative List of Imports consists of (i) prohibited items, import of which is not allowed under any circumstances; (ii) canalized items, which can normally be imported through the designated canalizing agencies; and (iii) restricted items, imports of which are allowed against Specific Import Licences or in accordance with a Public Notice which indicates the conditions under which the item can be imported without a licence.

Purpose and coverage of licensing

2. Capital goods, raw materials, components, consumables, spares, intermediates, packing material, parts, accessories, instruments and other goods may be imported without any restriction except to the extent that such imports are regulated by the Negative List of Imports or any other provision or law in force. However, to facilitate import of the Negative List items, an import licensing system has been adopted.

The policy and procedures governing import of various items is given in the Exim Policy which is valid for a specified period. The Handbook of Import-Export Procedures⁴ is also published

¹ See document G/LIC/3, Annex, for the Questionnaire.

² Contains information on import licensing procedures as at 13 April 1998.

³ Available for consultation in the Secretariat (Market Access Division).

⁴ Available for consultation in the Secretariat (Market Access Division).

to supplement the Exim Policy. In terms of Export and Import Policy, 1997-2002, import of all items other than those covered by the Negative List of Imports is allowed without any restriction. The restricted items are imported against specific import licences or in accordance with Public Notices issued for this purpose.

However, importability of an individual item can be determined as per the policy indicated against such items in the ITC (HS) classifications of Export and Import Items⁴. This compilation adopts the internationally accepted Harmonized System (HS) of Commodity Classifications as adopted by the Customs Cooperation Council (CCC), Brussels. Some of the codes have been created even at a ten-digit level so as to provide a distinct existence to certain products. For the purposes of distinct identity, these codes are called Exim Codes indicating import policy of the goods against such codes/products. This publication is considered to be helpful in ascertaining the import policy of various products as covered by the respective Exim Codes in different Chapters.

However, to facilitate import of the Negative List items the import licensing system has been adopted. Importers who are willing to avail themselves of these facilities are subject to licensing.

Main licensing systems

(i) *Grant of import licence for Negative List items:*

Paragraph 15.2 of the Exim Policy contains the list of restricted items. An application for import of such items may be made to the Director General of Foreign Trade (DGFT) or any other licensing authority authorized by him on his behalf. The licensing authority may take the assistance and advice of a licensing committee. The licensing committee will consist of representatives of technical authorities.

(ii) *Special Import Licence (SIL):*

(a) Export house/Trading house/Star trading house/Super star trading house:

Export house/Trading house/Star trading house/Super star trading house (defined as those companies the exports of which have an average f.o.b. of Rs 12.5 crores, 62.5 crores, 312.5 crores and 925 crores or Net Foreign Exchange (NFE) earnings of 10 crores, 50 crores, 250 crores or 740 crores in the preceding three licensing years and have an f.o.b. of 18.75 crores, 93.75 crores, 468.75 crores or 1387.5 crores or NFE earnings of 15 crores, 75 crores, 375 crores or 1110 crores for the preceding years) are entitled to Special Import Licences at the rate of six per cent, eight per cent, ten per cent and 12 per cent of f.o.b. value of exports made or 7.5 per cent, ten per cent, 12 per cent and 15 per cent of the NFE on exports in the preceding licensing year. Two per cent additional Special Import Licence is also granted for export of products manufactured by units registered as small-scale industries provided the export of these products is more than 50 per cent of the export during the period. Similarly one per cent additional Special Import Licence is granted for export of fruits, vegetables, floriculture and horticulture products, provided the export of these products is more than ten per cent of the export during the period. One per cent additional Special Import Licence shall be granted for the export of products manufactured and exported from North Eastern states provided the export of these products is more than ten per cent of the total exports during the period and one per cent additional Special Import Licence shall also be granted for the export of products to specified countries.

(b) Manufacturers/processors who have acquired the quality status of ISO 9000 (Series) or IS/ISO 9000 (Series) or ISO 14000 (Series) or HACCP Certification or WHO-GMP certification shall be eligible for Special Import Licences at the rate of five per cent of the f.o.b. value of exports made.

3. Almost all of India's trading partners receive m.f.n. treatment in the issue of import licences. The exception to this is Iraq (on account of UN sanctions in the case of Iraq) in case of which import licences cannot be used or issued.

4. The restrictions on imports of Negative List items are maintained mainly for balance-of-payment purposes as well as on grounds of safety, security and environmental protection policies and ensuring international agreements. In respect of certain items, the conditions for import have been specified in a general way in Public Notices issued for this purpose and the need for licensing in individual cases has been eliminated.

5. The foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade (Regulation) Rules, 1993 provide statutory authority for administering import licensing. Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 empowers the Central Government to make provisions on imports and exports.

Licensing is not a statutory requirement. However, import of any restricted item of the Negative List is possible either through an import licence or in accordance with any Public Notice issued for this purpose. Legislation has given full authority to the Government for this purpose. The Government can abolish the licensing system without legislative approval.

Procedures

6. I. A quota system is not adopted by the Government of India. However, import licensing is maintained for smooth operation of the import of Negative List items. The information of such Negative List items are published in the Export and Import Policy under Chapter 15; formalities for filing applications for imports are published in the Handbook of Procedure, Vol I. These are editions which are available for sale and also available on the website: <http://www.nic.in/eximpol>. Wide publicity is also given to the Export and Import policy through the media. The quota system is not maintained so the question of allocating a quota amount to each country does not arise. However, the quantity and value of imports to be made from different countries are not published as all countries receive m.f.n. status; the only exception is Iraq on account of UN sanctions.

The Export and Import policy is announced at the beginning of the financial year and remains valid for a specified period. The current policy is valid for five years from April 1997 to March 2002. The Handbook of Procedure is also published simultaneously indicating in detail the procedures to be followed for making applications for import licences.

II. Imports into India are not restricted through maintenance of quotas, as items may be imported without any restriction except to the extent such imports are regulated by the Negative List of Imports of the Export and Import policy, 1997-2002, or any other provisions of this policy or any other law in force.

III. This question is relevant only in cases where a quota system is maintained and a quota system is not operative in India. The items appearing in the Negative List of Imports of the Export and Import Policy (other than those imports which are prohibited or canalized) may be allowed against Specific Import Licences or in accordance with the Public Notice issued for this purpose. Such items are subject to Actual User Conditions⁵ unless this condition is specifically dispensed with. The names of the

⁵Actual User Conditions: capital goods, raw materials, intermediates, components, consumables, spares, parts, accessories, instruments and other goods, which are importable without any restriction, may be imported by any person whether he is an Actual User or not. However, if such imports require a licence, the Actual User alone can import such goods unless the Actual User Condition is specifically dispensed with by a licensing authority.

licence holders can be made available to the Government and export promotion bodies of the exporting countries upon request.

IV. As already stated, India does not have quota restrictions on imports.

V. The time-limit for processing SIL applications is five working days. However, applications for special licences mentioned in Paragraph 2(ii) above are also processed within five days after clearance by a special licence committee.

VI. Import licences, wherever required, are issued with a specified period of validity for shipment of goods. It is up to the importer to import goods any time during the validity period of the import licence. Import licences are valid for the already shipped/arrived goods provided custom duties have not been paid and the goods have not been cleared by customs.

VII. Import applications are submitted to the Office of the Director-General of Foreign Trade, New Delhi or its regional offices, as the case may be. The practice of routing licence applications through the sponsoring authorities has been dispensed with. Such applications are now considered by a Special Licensing Committee, wherever necessary, constituted for this purpose. There is a single administrative organ for considering these applications.

VIII. No quota system is maintained in India. Imports are free except to the extent of the Negative List as given in Chapter 15 of the Export and Import Policy, 1997-2002. The import of Negative List items is allowed on a first-come-first-served and past-performance basis by the licensing committee. There is no maximum limit to be allocated per applicant. The track record and financial position of new importers is kept in mind while issuing the licences. The applications are examined as soon as they are received.

IX. At present, no imports into India are being made under bilateral quotas or export restraint arrangements.

X. As stated in IX, no imports are made into India on the basis of export permits.

XI. The licences mentioned in paragraph 2 above are issued either with actual user condition or freely transferable condition. However, these licences do not bear the condition that imported goods should be exported and not sold in the domestic market.

7.
 - (a) The licences shall be valid for goods already shipped/arrived at the port of clearance.
 - (b) Yes, if the applicant fulfils the legal requirements.
 - (c) No, there is no limitation for maximum number of applications for import licences. However, Special Import Licences to status holders like Export Houses/Trading Houses etc. can be issued on a six-monthly basis. This licence is issued on the basis of past export performance and realization of the export proceeds.
 - (d) The importer has to approach the Director General of Foreign Trade for an import licence. The applicants need not approach other authorities for visa, note or approval. Only single administrative clearance is required.
8. The licensing authority may refuse to grant an import licence:
 - (i) if the applicant has contravened any law relating to customs or foreign exchange;
 - (ii) if it has been decided by the Central Government to canalize imports and distribution thereof through special or specialized agencies;
 - (iii) if any action against the applicant is pending under the Foreign Trade (Development and Regulation) Act, 1992, or rules and orders made thereunder;
 - (iv) if the applicant fails to pay any penalty imposed on him under the said Act;

- (v) if the applicant is not eligible for a licence in accordance with any provisions of the Export and Import Policy; and
- (vi) if no foreign exchange is available for the purpose.

The aggrieved importer can file a representation with the Office of the DGFT. The representation is treated as an appeal by the DGFT.

Eligibility of importers to apply for licence

9. All eligible persons, firms and institutions can apply for a licence provided they hold a valid Importer Exporter Code Number (IEC). There is no system of registration of persons or firms permitted to engage in importation.

Documentational and other requirements for application for licence

10. The application form indicates the type of information and the documents normally required for processing the application. The application format for import of restricted list (Negative List) and SIL items are given in Appendices 8 and 20-D of the Handbook of Export and Import Procedures, 1997-2002.

11. The documents required upon actual importation are, besides the import licence:

- shipping documents;
- commercial invoices; and
- certificates of origin if required.

12. Fees are charged on application for licences according to the value of imports to be made. The present rates are: Rs 200 where the value does not exceed Rs 50,000, and Rs 2 for every Rs 1,000 or part thereof, subject to a maximum of Rs 1.5 lakh (where the value exceeds Rs 1 crore).

13. There is no deposit or advance payment requirement associated with the issue of import licences.

Conditions of licensing

14. An import licence shall normally be endorsed with a period of validity of 12 months. The licence may be revalidated on merits for such periods as the licensing authority may deem fit.

15. No.

16. Special Import Licences are freely transferable among importers. No conditions are imposed on such transfers.

17. Licences to import Negative List items mentioned in paragraph 2(i) above are issued with Actual User condition unless it is dispensed with. However, licences mentioned in paragraph 2(ii) are freely transferable. No other conditions are attached to these licences including the conditions of quantitative restrictions.

Other procedural requirements

18. No.

19. Foreign exchange is provided by the authorized dealers in foreign exchange for import of goods. However, for import of items appearing in the Negative List of Imports, an import licence is

required. Foreign exchange is made available to cover imports. Normal banking procedures apply for obtaining foreign exchange.
