

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

L/5640/Add.40/Rev.3/Corr.1
2 February 1994

ACUERDO GENERAL SOBRE ARANCELES ADUANEROS Y COMERCIO

Limited Distribution

(94-0191)

Original: English/anglais/inglés

REPLIES TO QUESTIONNAIRE ON IMPORT LICENSING PROCEDURES

United States

Corrigendum

The following notification¹ has been received from the delegation of the United States in response to the Questionnaire on Import Licensing Procedures annexed to L/5640/Rev.9. The notification updates the information appearing in document L/5640/Add.40/Rev.3.

REPONSES AU QUESTIONNAIRE RELATIF AUX PROCEDURES EN MATIERE DE LICENCES D'IMPORTATION

Etats-Unis

Corrigendum

La délégation des Etats-Unis a fait parvenir au secrétariat la notification ci-jointe¹ en réponse au questionnaire relatif aux procédures en matière de licences d'importation annexé au document L/5640/Rev.9. Le présent document met à jour les renseignements précédemment communiqués dans le document L/5640/Add.40/Rev.3.

RESPUUESTAS AL CUESTIONARIO SOBRE PROCEDIMIENTOS PARA EL TRÁMITE DE LICENCIAS DE IMPORTACIÓN

Estados Unidos

Corrigendum

Se ha recibido la siguiente notificación¹ de la delegación de los Estados Unidos, presentada en respuesta al cuestionario sobre procedimientos para el trámite de licencias de importación anexo al documento L/5640/Rev.9. Con la presente notificación se actualiza la información facilitada en el documento L/5640/Add.40/Rev.3.

¹English only/anglais seulement/en inglés solamente.

Page 3, reply 1, second line:

Insert "some" before "plant products".

Page 3, reply 2:

Delete "cut flowers" from the list of products and add "certain cut flowers (roses, gerbera, lilac, camellia, rhododendron and azalea)" and "soil and quarry products".

Page 4, reply 7(d):

Replace the last sentence by the following: "Most applications are not passed on to other offices for visas, note or approval, and the importer does not have to approach more than one administrative organ. The exception to this are the permit applications for soil and for plants required to be grown in post-entry quarantine".

Page 14, reply 12-13, second sentence:

Replace "1992" by "1993" and "US\$75.00" by "US\$88.00".

Pages 17-20, section 5. Department of Energy: Natural Gas:

Replace the entire section by the following:

"5. DEPARTMENT OF ENERGY: NATURAL GAS"¹

1. OUTLINE OF SYSTEMS

Import of natural gas, whether by pipeline or as liquefied natural gas (LNG), are regulated under Section 3 of the Natural Gas Act (NGA) (15 U.S.C. 717b), which provides that "no person shall ... import any natural gas from a foreign country without first having secured an order ... authorizing it to do so". Section 3 also provides that such orders shall be issued unless, after opportunity for hearing, it is found that the proposed importation will not be consistent with the public interest. Authority over imports of natural gas rests with the Secretary of Energy. The Secretary has delegated the authority to "authorize" the import to the Assistant Secretary of Fossil Energy (FE) (Delegation Orders Nos. 0204-111 (49 FR 6690, 22 February 1984) and 0204-127 (54 FR 11436, 20 March 1989)).

In addition, the Secretary has delegated authority to the Federal Energy Regulatory Commission (FERC) to regulate the imported natural gas within the domestic gas system (Delegation Order No. 0204-112 (49 FR 6690, 22 February 1984)). FERC responsibility includes the functions of approval or disapproval of the construction and operation of particular facilities, the site at which such facilities

¹A copy of each of the following is available for reference in the Secretariat (Office No. 3013):

- Natural Gas Act of 21 June 1938, as amended;
- How to Obtain Authorization to Import or Export Natural Gas (4 October 1993);
- Procedures for Filing and Processing an Application before the Office of Fossil Energy for Authorization to Export/Import Natural Gas under Section 3 of the Natural Gas Act;
- New Policy Guidelines and Delegation Orders on the Regulation of Imported Natural Gas (17 February 1984).

shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry.

On 24 October 1992, the Energy Policy Act of 1992 (EPACT) was enacted. Section 201 of EPACT amends Section 3 of the NGA by eliminating the Department of Energy's (DOE) need to make a public interest finding for natural gas imports from "a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas", and for imports of LNG. Therefore, natural gas (and LNG) imports between the United States and other countries with which the United States has a free trade agreement are "deemed to be consistent with the public interest, and applications for such importation shall be granted without modification or delay".

Currently, virtually all natural gas import applications filed with DOE are reviewed under EPACT standards. DOE is not required to evaluate these applications to determine whether they are "in the public interest". Because DOE's discretionary authority has been eliminated by EPACT in these cases, there is no longer a need to initiate public proceedings or to solicit public comments. Rather, after these import applications are reviewed for completeness and legal sufficiency, DOE prepares and issues authorizations as requested. Orders granting authorizations are required in these cases, but applications take less time to process than cases which do not fall under EPACT.

PURPOSES AND COVERAGE OF LICENSING

2. The products covered are natural gas and liquefied natural gas.
3. The system applies to goods originating from any country, but predominately Canada and Algeria.
4. The licensing is not intended to restrict the quantity or value of natural gas imports.
5. See response to question 1.

PROCEDURES

6. Not applicable.
7.
 - (a) DOE regulations (10 C.F.R. Part 590) specify that an applicant for a natural gas import authorization should apply 90 days prior to the anticipated date for start-up of the import. However, the issuance of an import authorization normally takes less than two weeks if reviewed under EPACT standards.
 - (b) An authorization to import natural gas can be granted as soon as an applicant has filed a legally sufficient application, and as soon as that application is reviewed and processed.
 - (c) There are no limitations as to the period of the year during which an application for authorization to import natural gas may be made.
 - (d) Licensing applications are considered by a single administrative organ - the Office of Fossil Energy, U.S. Department of Energy, the Forestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.
8. There are no circumstances under which an import authorization can be refused, as long as an applicant has submitted a legally sufficient application. Information which must be contained in the application is specified in 10 C.F.R. 590.

ELIGIBILITY OF IMPORTERS TO APPLY FOR LICENCE

9. All persons, firms and institutions are eligible to apply for authorization to import natural gas. Traditionally, entities applying for such authorizations have been natural gas pipeline companies, natural gas producers, natural gas marketers and utility companies.

DOCUMENTATIONAL AND OTHER REQUIREMENTS FOR APPLICATION FOR LICENCE

10. Import authorization proceedings are initiated by the filing of an application. The application is not a standard form but rather an individual document incorporating basic information about the proposed import arrangement, and exhibits required by the rules covering such applications set forth in DOE regulations (10 C.F.R. Part 590). EPACT has necessitated creation of a bifurcated process in the manner in which DOE reviews applications to import natural gas. Applications which involve gas imports with nations with which the United States has a free trade agreement must be granted by DOE "without modification or delay". As a result, DOE's action of issuing such import authorizations is ministerial in nature.

However, for applications involving gas imports with nations with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas, DOE must determine whether the import proposal is "in the public interest". Those applications are subject to the administrative procedures specified in 10 C.F.R. Part 590.

Import applications not affected by EPACT - Natural gas import applications not affected by EPACT, that is, those cases which involve imports from a nation with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas, are subject to procedural requirements found in 10 C.F.R. Part 590. After receipt of an application, DOE provides public notice of the filing in the Federal Register and solicits comments ~~on~~ the proposed import. Depending upon the response to the notice and intervention by interested parties, DOE may act on the application immediately, or may institute further proceedings. An opportunity to request these additional proceedings must be provided to the parties before an application can be denied.

DOE's review of these import applications is guided by Delegation Order No. 0204-111 and certain natural gas import policy guidelines issued in February 1984 by the Secretary of Energy. The Delegation Order specifies that the regulation of imports shall be based on matters appropriate to each particular case, including (1) the competitiveness of the import; (2) the need for the gas; and (3) security of the supply. With respect to the competitiveness of a proposed import, the applicant must demonstrate that the provisions of the arrangement are flexible enough to ensure continued competitiveness over the duration of the import, including flexibility to meet changing market conditions. If the import arrangement is considered competitive, a presumption is made that there is a need for this supply in the proposed market area. With regard to security of the supply, the policy guidelines provide that reference will be made to the historical reliability of the supplier as a source of natural gas for the United States.

11. There is no application form. The application takes the form of a written petition which must contain the information specified in the regulation (10 C.F.R. Part 590).

12. A filing fee of US\$50.00 is charged for each application.

13. There is no deposit or advance payment requirement associated with the issuance of an order to import natural gas.

CONDITIONS OF LICENSING

14. The duration of a natural gas import authorization usually is specified in the Opinion and Order issued by DOE, and depends upon the particular circumstances of the import arrangement. An import authorization can be extended upon application to DOE.
15. There is no penalty for non-utilization of an order to import natural gas.
16. Authorizations to import natural gas are not transferable between importers.
17. Not applicable.

OTHER PROCEDURAL REQUIREMENTS

18. Each import authorization order requires natural gas importers to report sales information quarterly to DOE. Information reported includes volume, price, names of sellers and buyers, and other details of the import transactions.
19. Not applicable."

Page 27, reply 2:

Replace the last paragraph by the following: "The attached copy of Title 21, Code of Federal Regulations, Part 1300 to end, revised as of 1 April 1993¹, includes all the latest scheduling actions. Since 1 April 1993, there have been two scheduling actions:

Levo-alpha-cetylmethadol was transferred from Schedule I into Schedule II, effective 18 August 1993, except for those individuals who are currently registered with DEA and possess LAAM who shall take inventory and meet record-keeping requirements on or before 17 September 1993 (58 FR 43795, 18 August 1993¹).

Methcathinone was placed into Schedule I, effective 15 October 1993 (58 FR 53404, 15 October 1993¹).

Other than opium, poppy straw, concentrate of poppy straw or coca leaf, no Schedule I or II substance, or narcotic substance in Schedule III, IV or V may be imported unless the Attorney General finds (a) an emergency exists in which domestic suppliers are inadequate or (b) competition among domestic manufacturers is inadequate and will not be rendered adequate by the registration of additional manufacturers.

¹Available for reference in the Secretariat (Office No. 3013)."

Page 33, reply 2:

Replace the second and third sentences by the following: "Alcohol or distilled spirits as defined in U.S.C. 5002 (a)(8), includes alcohol which may have denaturants present. Such alcohol cannot be received into this country except by a distilled spirits plant, permitted and bonded under the Internal Revenue Code unless it is tax-paid upon importation".

Page 35, reply 1, fifth line:

Replace "The recent" by "In 1989, a".

Page 35, reply 3:

Replace the second sentence by the following: "Currently proscribed countries include: Albania, Bulgaria, Cuba, Kampuchea, North Korea, Outer Mongolia, Romania, South Africa, Vietnam and those countries or areas that comprised the former Soviet Union, including Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldavia, Russia, Tajisistan, Turkmenistan, Ukraine and Uzbekistan".

Pages 37 and 39, reply 14:

Replace "six months" by "one year".