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REPLIES TO QUESTIONNAIRE ON IMPORT LICENSING PROCEDURES

INDIA

Revision

The following revised notification has been received from the Permanent Mission of India in response to the Questionnaire on Import Licensing Procedures annexed to L/5640/Rev.10. It replaces document L/5640/Add.7/Rev.5.

OUTLINE OF SYSTEMS

1. One of the main objectives of the present trade policy of the Government of India is to phase out quantitative, licensing and other discretionary controls regulating India's foreign trade. Keeping this objective in view, the current Export and Import Policy was announced by the Government on 31 March 1992, valid for a period of five years from April 1992 to March 1997.

In terms of Export and Import Policy for 1992-97, 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 prohibited items, restricted items and canalized items. Import of prohibited items contained in the Negative List of Imports is not allowed under any circumstances, whereas the canalized items can be imported through the designated canalizing agencies. Imports of canalized items may also be permitted against a licence granted by the Director-General of Foreign Trade. As regards restricted items, imports may only be allowed against specific import licences or in accordance with a Public Notice issued for this purpose.

Second-hand capital goods may also be imported without a licence by actual users with effect from 30 March 1994.

The erstwhile Imports and Exports (Control) Act, 1947, has been replaced by a new act called the Foreign Trade (Development and Regulation) Act, 1992. Under this Act, import licences and customs clearance permits, wherever necessary, will be issued by the Office of the Director-General of Foreign Trade, New Delhi and its regional offices in India.

PURPOSES AND COVERAGE OF LICENSING

2. The policy and procedures governing import of various items is given in the Import Policy Book which is valid for a specified period. The Handbook of Import-Export Procedures is also published as a supplement to the Import Policy. The current Export and Import Policy and Handbook of Procedures are valid for a period of five years, i.e., up to 31 March 1997. In terms of Export and Import Policy, 1992-97, import of all items other than those covered by the Negative List of Imports

is allowed without any restriction. The Negative List of Imports comprises prohibited items, restricted items and canalized items. Import of prohibited items is banned whereas canalized items can be imported through designated agencies or against a licence granted by the Director-General of Foreign Trade. The restricted items are allowed to be imported against specific import licences or in accordance with Public Notices issued for this purpose.

3. Almost all of India's trading partners receive MFN treatment in the issue of import licences. The exceptions to this are Iraq, Fiji, South Africa and Yugoslavia (Serbia and Montenegro) in case of which import licences cannot be used or licences issued against tied aid and foreign credits and under rupee payment area which are available only for imports from specified countries.

4. The restrictions on import of Negative List items are for balance-of-payment purposes as well as on grounds of safety, security, environment, employment and the like. 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 statutory authority for development and regulation of foreign trade by facilitating import into and augmenting exports from India is the Foreign Trade (Development and Regulation) Act, 1992.

PROCEDURES

6. I. Imports into India are not restricted through maintenance of quotas. All items may be imported without any restriction except to the extent such import are regulated by the Negative List of Imports of the Export and Import Policy, 1992-97, or any other provisions of this policy or any law in force.

The Negative List of Imports comprises three prohibited items, consumer goods, 72 restricted items and seven canalized items. Three prohibited items - tallow, fat and/or oils of animal origin, animal rennet, and ivory unmanufactured - are prohibited for imports.

Import of consumer goods and consumer durables covered by the list of restricted items is under restraint. The list of restricted items under the Negative List also includes specified precious, semi-precious and other stones; insecticides and pesticides; electronic items; drugs, pharmaceuticals, chemicals and allied items; items relating to the small-scale sector; certain miscellaneous items; and special items required for hotels, the tourism industry and sports bodies.

Import of restricted items covered by the Negative List may be made against a licence or in accordance with Public Notices issued for this purpose. In the case of import of ships, trawlers and boats, aircraft and helicopters, automobiles and newsprint, no licence is required but imports are allowed subject to published conditions. Import of second-hand goods and machinery may be allowed against a specific licence only unless otherwise exempted. The number of canalized items has been drastically reduced and canalization is confined to certain petroleum products, fertilizers, edible oils and a few other items.

Import of 67 specified restricted items (including certain consumer goods) is, however, permitted freely against freely transferable Special Import Licences granted to Export Houses, Trading Houses or Star Trading Houses or Super-Star Trading Houses and manufacturers who have acquired prescribed quality certification on the basis of their foreign exchange earnings. One-time facility for import of cars is available to Export Houses, Trading Houses, Star Trading Houses or Super-Star Trading Houses against their own Special Import Licence.

Restrictions on the items included in the Negative List of Imports are considered necessary for balance-of-payment reasons as well as on grounds of safety, security and environment.

For import of items required for export production, exporters are issued duty-free import licences under the Duty Exemption Scheme. In addition, under the Export Promotion Capital Goods (EPCG) Scheme, capital goods may be imported at a concessional rate of customs duty subject to an export obligation to be fulfilled over a period of time.

1. DUTY EXEMPTION SCHEME

The Duty Exemption Scheme is an important instrument for boosting exports. The basic objective of the scheme is to make available to the registered exporters the necessary inputs except for prohibited items listed in the Negative List of the Export-Import Policy, for export production at international price without payment of customs duty so as to make exports competitive in the international market both in terms of quality and value. The scheme as contained in Chapter VII of the Export-Import Policy, 1992-97, has been modified and enlarged. The modified Duty Exemption Scheme now covers the following categories of licences:

- (i) Advance Licence;
 - (a) Value-Based Advance Licence;
 - (b) Quantity-Based Advance Licence;
- (ii) Self-Declared Passbook Scheme;
- (iii) Advance Intermediate Licence;
- (iv) Special Imprest Licence; and
- (v) Advance Customs Clearance Permit.

The basis and conditions for issue of these types of licence vary. Hence licences issued under one category cannot be combined with those issued under another category. Duty-free licences bear a suitable export obligation for the purpose of achieving the objective of the scheme. The purpose and scope of the categories of licence mentioned above are as follows:

(i) Advance Licences

An Advance Licence is granted for the duty-free import of inputs subject to the fulfilment of specified time-bound export obligation and value addition. Advance Licences may either be value based or quantity based.

(a) Value-Based Advance Licences

Under a value-based advance licence, any of the inputs specified in the licence may be imported within the total c.i.f. value indicated for those inputs, except for notified sensitive items. The sensitive items may be imported only to the extent of the quantity or value specified in the licence.

(b) Quantity-Based Advance Licences

The quantity-based advance licence will indicate the names and description of items to be imported and exported, the quantity of each item of import or in case where the quantity cannot be indicated the value of the items, the c.i.f. value of imports and quantity and f.o.b. value of exports. The quantity of each item of import shall be allowed in accordance with the standard input-output norms as mentioned above

based on the quantity of goods to be exported. In respect of items for which no norms exist in the statement of standard input-output norms, the quantitative norms may be approved by the competent authority.

(ii) Self-Declared Passbook Scheme

The scheme is based on self-certification and self-declaration by the exporters. The Super-Star Trading Houses, Trading Houses and Export Houses and exporters of certain other products as specified in this behalf are eligible to avail of this scheme. Under this scheme, an eligible exporter may obtain a passbook indicating the names and description of the items of imports and exports, as well as the value addition to be achieved through such exports. The exporter himself enters on the import side of the passbook the description of the items to be imported and c.i.f. value of the imports. On the basis of such self-declaration and self-certification, import of necessary inputs shall be permitted. After the export is made, the exporter shall also indicate on the export side of the passbook the names and description of the items exported and the value addition achieved. Thus, based on such self-declaration and self-certification the exporter will be discharged from export obligation after a due verification. The import against such self-declared passbook will be allowed against Bank Guarantee/Legal Undertaking as the case may be as per defined procedure.

(iii) Advance Intermediate Licence

Such licences are quantity based and are issued to registered manufacturer exporters for import of basic inputs for manufacture and supply of intermediate products under a tie-up arrangement, to another manufacturer-exporter, called the ultimate exporter, holding the Advance Licence, for further processing into the final product for export. The objective of the scheme is to integrate the production activities of the two indigenous manufacturers, with the optimum utilization of the indigenous infrastructure to achieve a higher value addition. Imports are allowed in accordance with the standard input-output norms as mentioned above.

(iv) Special Imprest Licence

The Special Imprest Licence is granted for duty-free import of necessary inputs to main/sub-contractor for the manufacture and supply of products to United Nations Organizations or for the Aid Programme of the United Nations, other multilateral agencies, EOU/EPZ Units Electronic Hardware Technology Parks (EHTPs), fertilizer plants and also to any project notified by the Ministry of Finance, Department of Economic Affairs. The Special Imprest Licence is also a quantity-based licence.

(v) Advance Customs Clearance Permit

Under the Advance Customs Clearance Permit the duty-free import of goods supplied free of cost by the foreign buyer is allowed on job-work basis for re-export subject to achievement of prescribed minimum-value addition of not less than 10 per cent.

Normally, merchants/manufacturer exporter holding an import-export code number, a specific export order/letter of credit, etc., is eligible for duty-free licences mentioned above. However, an exporter even without having an export order may also apply for such licences (except Advance Intermediate Licence and Special Imprest Licence) under export production programme subject to fulfilment of other eligibility conditions. The export obligation imposed in each case is required to be fulfilled within the period stipulated productwise. After fulfilment of export obligation, duty-free licences (except Advance Customs Clearance Permit, Advance

Intermediate Licence and Special Imprest Licence) may be freely transferred by the exporter provided, on the exports made, no modvat/performa credit facility or excise relief under Central Excise Rules has been availed of.

A duty-free licence holder (including a transferee) may, instead of making imports also procure the raw materials etc., from indigenous sources through Advance Release Order System (ARO). The ARO is issued against quantity-based licences only.

2. DEEMED EXPORTS

Under the policy, the concept of deemed exports cover those transactions in which goods supplied do not leave the country, and the payment for the goods is received by the supplier in Indian Rupees but the supplies earn or save foreign exchange for the country. There are seven categories of supplies which are treated as deemed exports. Such supplies are eligible for the following benefits:

- Duty Exemption Scheme;
- Duty Drawback Scheme;
- Refund of Terminal Excise Duty; and
- Special Import Licence @ 5 per cent of f.o.b. value of supplies made.

3. EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

Under the EPCG Scheme, the permitted capital goods may be imported at a concessional rate of customs duty of 15 per cent or the same may be sourced from the domestic manufacturers subject to an export obligation of four times the c.i.f. value of imports. The domestic manufacturers, permitted to supply the capital goods under this scheme to an EPCG licence holder, can also import the requisite components at a concessional rate of customs duty of 15 per cent. Besides, under the EPCG Scheme for the services sector the relevant capital equipment may be imported at a concessional rate of customs duty by the service providers for rendering a certain specified service for which the payments are received in a freely convertible currency.

4. The exporters of specified gem and jewellery products are eligible for grant of replenishment licences at the rate and for the items mentioned in the Export and Import Policy to import and replenish their inputs. Such licences are transferable.

Export Houses/Trading Houses/Star Trading Houses/Super-Star Trading Houses (defined as those companies the exports of which have averaged 10, 50, 250 and 750 crores or net foreign exchange earnings of 6, 30, 125 and 400 crores in the preceding three years and have been 15, 75, 300 and 1,000 crores or net foreign exchange earnings of 12, 60, 150 and 600 crores in the previous year) are entitled to Special Import Licences @ 3, 4, 5 and 10 per cent of the f.o.b. value of exports made or 5, 7.5, 10 and 15 per cent of net foreign exchange earnings on exports in the preceding licensing year.

The Export and Import Policy is announced at the beginning of each financial year, and is valid for a specified period. The current policy is valid for a period of five years from April 1992 to March 1997. The Handbook of Procedures is also published simultaneously indicating in detail the procedures to be followed for making applications for import licences. Export and Import Policy and the Handbook of Procedures are priced publications.

The amounts of imports to be made from different countries are not published in the Import Policy Book. Imports are allowed from all countries of the world except Fiji, Iraq, South Africa and Yugoslavia (Serbia and Montenegro).

II. As already indicated, a quota system for restricting imports does not exist in India. The import policy is valid for a specified period. Under the current policy, import of all items other than those covered by the Negative List of Imports is allowed freely.

III. This question is also relevant only in cases where a quota system is maintained and is not applicable to the system 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 Conditions.¹

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

V. The time-limit for processing various types of application varies and it may be between two and 30 days.

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. Generally, the goods should be shipped from the exporting country, only after the import licence is issued, and licences cannot ordinarily be granted for the goods which have already arrived at the port.

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.

VIII. There are no quota restrictions. All items except those covered by the Negative List of Imports can be imported without any restriction. Items appearing in the Negative List (other than those imports which are prohibited or canalized) may be imported against Specific Licences or in accordance with the Public Notice issued for this purpose.

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. Against export of gem and jewellery items, the items required in the manufacture of export product are allowed for import. Similarly, under the Export Promotion Capital Goods (EPCG) Scheme, capital goods may be imported at a concessional rate of customs duty subject to export obligation to be fulfilled over a period of time.

7. An importer must obtain an import licence before shipment of the goods from the overseas country. However, in genuine cases goods shipped before the issue of an import licence but after submission of the connected import application, can be allowed to be cleared by the Customs.

¹Actual 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.

Licences are granted as per provisions contained in the Export and Import Policy in force. Within the framework of the policy, the issue of a licence can be expedited to meet exigencies.

Applications for import licences are to be submitted by 28 February of the licensing year ending on 31 March unless otherwise specified.

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 reasons for refusal are generally given to the applicant.

ELIGIBILITY OF IMPORTERS TO APPLY FOR LICENCE

9. In the case of imports requiring licences, all eligible persons, firms and institutions can apply.

DOCUMENTATIONAL AND OTHER REQUIREMENTS FOR APPLICATION FOR LICENCE

10. A sample form for import of raw materials, components and spare parts is attached.² This form indicates the type of information and the documents normally required for processing the application. These are published in the Handbook of Export and Import Procedures.

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

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

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 50,000).

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

²Available for consultation in the Secretariat (Office No. 3013)

CONDITIONS OF LICENSING

14. Import licence shall normally be endorsed with a period of validity of 12 months. However, a licence for import of capital goods shall normally be endorsed with a period of validity of 24 months. The licence may be revalidated on merits for such periods as the licensing authority may deem fit.

15. No.

16. Replenishment Licences issued to exporters of all specified gem and jewellery products are freely transferable. In addition, the Advance Licences issued under the Duty Exemption Scheme except Special Imprest Licence and Intermediate Advance Licence can also be transferred after the licence holder has fulfilled the export obligation.

17. The following conditions are applicable to import licences:

- (i) import licences are not normally transferable, except Replenishment Licences and Special Import Licences;
- (ii) the goods covered by the licence shall not be disposed of export in accordance with the provisions of the policy or in the manner specified by the licensing authority in the licence;
- (iii) the goods for import of which a licence is granted shall be the property of the licensee at the time of import and up to the time of clearance through Customs;
- (iv) the goods for the import of which a licence is granted shall be new goods, unless otherwise stated in the licence;
- (v) unless otherwise specified, the raw materials, components and spares imported shall be used only in the licence holder's factory. These may be processed in the factory of another manufacturing unit, but no portion thereof shall be sold to any party. The goods so processed shall be utilized in the manufacturing process undertaken by the licensee.

OTHER PROCEDURAL REQUIREMENTS

18. No.

19. Foreign exchange is provided by the authorized dealers in foreign exchange for import of goods. Only for import of items appearing in the Negative List of Imports, an import licence is required by the authorized dealers in foreign exchange. Normal banking procedures apply for obtaining the foreign exchange.