

# WORLD TRADE ORGANIZATION

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Committee on Import Licensing

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## IMPORT LICENSING SYSTEM OF INDIA

### Replies by INDIA to the questions from the UNITED STATES

The following communication, dated 29 October 2012, is being circulated at the request of the delegation of India.

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India thanks United States for the follow-up questions on its Import Licensing System dated 16 April 2012 and circulated in document G/LIC/Q/IND/19.

**Q1. In one of its responses to a previous U.S. question regarding the ability of traders to apply for an import permit for boric acid (G/LIC/Q/IND/12), India stated, "Any person who can furnish the complete information as required in the application pro forma can apply for a grant of import permit." In response to subsequent questions (G/LIC/Q/IND/16), India states, "Any person, firm or institution can apply for import permit only if such person/entity is the end user" and "import permit is issued only to an actual end user." Please explain the current requirements as to who may be permitted to apply for an import license and provide where such requirements are set out in Indian law or regulation. Please also provide the Indian law or regulation that sets out the most up-to-date procedures required for importation of boric acid, including, if possible, an Internet address where such law or regulation may be located.**

Reply: Boric acid is a multi-use product, with one of the important functions being that of an insecticide. It can thus be used for both – insecticidal and non-insecticidal purposes. Its import is, regulated under the Insecticide Act, 1968 and further by Orders issued by the Department of Agriculture and Cooperation under File No. 17-2/2004-PP-I (Vol. VI) dated 26 August 2005 and 31 July 2006.

The Insecticide Act, 1968 ([http://www.cibrc.nic.in/insecticides\\_act.htm](http://www.cibrc.nic.in/insecticides_act.htm)) lays down the basic provisions governing import of insecticide, including a requirement of registration with the Registration Committee constituted under the Act. The Act, however, provides exemption to those substances which are intended for non-insecticidal use.

Accordingly, under the Order dated 26 August 2005, the import of boric acid has been allowed on the basis of:

- (i) Registration certificates issued by the Registration Committee in respect of insecticidal use, or
- (ii) Import permit issued by the Registration Committee on the recommendations of the administrative Ministry/Department concerned in respect of non-insecticidal use.

Thus, the Registration of the importers of Boric Acid with the Central Insecticides Board & Registration Committee (CIB&RC) under the provisions of the Insecticides Act, 1968 is a precondition for import if its use is for insecticidal purposes.

In case the Boric Acid is proposed to be imported for an identified non-insecticidal use, then such imports would be exempted from the requirements of registration under the Act, on the basis of a certificate of end use issued by the concerned Administrative Ministry/Department of the Government. Based on the aforesaid end use certificate, the Registration Committee grants import permits. Any person, firm or institution, which has the intention to use boric acid for non-insecticidal purpose, is eligible for applying for an import permit.

**Q2. The United States has previously requested an exhaustive list of Government of India agencies that can issue end-use certificates, but India's response referred only to an illustrative list (G/LIC/Q/IN/14). Could India please provide an exhaustive list and explain how an importer or end-user would know precisely from which entity it should seek an end-use certificate (e.g., in the case of boric acid imported for non-insecticidal uses)?**

Reply: As mentioned in the previous reply, a list of Authorities of the Ministries/Departments authorized for issuance of end-use certificate is given in the Department of Agriculture and Co-operation's letter no. 17-2/2004-PP I dated 4 May 2006 which is available under "News & update" on the website [www.cibrc.nic.in](http://www.cibrc.nic.in). Moreover end-use certificates of the District Industries Centers of the State Governments/State Directors of Industries are also accepted by the competent authority.

The end use certificate is issued by the concerned Administrative Ministry/Department of the Government. Therefore the authority authorized to issue the end use certificate, would depend on the nature of end use itself. For instance, if the boric acid is meant for use as "flux" in metallurgical operations (e.g. welding and brazing) in the steel industry, the concerned Joint Secretary in the Ministry of Steel would issue the end use certificate.

**Q3. The United States has previously requested India's assistance in understanding why the information requested on the import license application is necessary, and how India's procedure ensures that the boric acid being imported is not being misused. While India's response clarified and reiterated the need for an end use certificate (G/LIC/Q/IND/16), it was still not clear exactly how India import licensing procedures achieve its objective of avoiding misuse of boric acid and why the information India requests on the import license application advances that objective. We would appreciate a fuller explanation in this respect.**

Reply: The underlying objective of import licensing of boric acid is to ensure that the imported goods are used for the intended purpose. The system of registration, as explained in reply to the first question, monitors and ensures use in agriculture, health programs and households for controlling pests. Similarly, in order to ensure actual use of imports meant for non-insecticidal purpose, the system of import permits was introduced. Issuance of import permits is a kind of exemption, wherein no data on chemistry, bio-efficacy, toxicity or packaging is required to be submitted as in the case of registration. However, import permits are issued based on an end-use certificate, which facilitates monitoring the actual use of pesticides after their import. If imports for non-insecticidal use are permitted without regulating end use condition, it would not be possible to monitor their fate after import and the possibility of their diversion for insecticidal purposes cannot be ruled out.

**Q4.** India noted that domestic manufacturers and traders must register before the Central Insecticides Board and Registration Committee (G/LIC/Q/IND/12) and that domestic producers must maintain production and sales records (G/LIC/Q/IND/12). What specific actions are required for domestic producers and traders to fulfil these requirements, where are these requirements set out in Indian law, and how does India enforce them?

Reply: The requirements for registration and provisions of enforcement are given in the Insecticide Act, 1968. The domestic manufacturers are required to maintain production and sales records as per Order No. 17-2/2004-PP-I (Vol. VI) dated 31.07.06 of the Department of Agriculture and Cooperation.

**Q5.** The United States understands that a 2007 circular from the Central Board of Excise & Customs (CBEC) definitively established that boric acid would be classified under heading 3808 only when imported as a pesticide for insecticidal use and that in all other circumstances boric acid would be classified under heading 2810. Heading 3808 covers insecticides, whereas heading 2810 covers oxides of boron.

Reply: This is a statement of fact.

**Q6.** The United States understands that on 22 June 2011, the CBEC issued instructions (F.No.401/101/2011-Cus.III) that items that are listed in Schedule B of the Insecticides Act of 1968 but are "intended for purposes other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings" are exempted from the "requirement of registration / import permit from CIB & RC." However, the CBEC instructions "clarified that the import of Boric Acid would continue to be governed by the specific instructions on the items that are currently in force." Please clarify what the specific instructions are that non-insecticidal boric acid is required to meet.

Reply: Please see reply to the first question.

**Q7.** Given the 2007 classification decision, recognizing that imports under heading 2810 are *not* insecticides, and the 2011 instructions, why are boric acid imports under heading 2810 required to be licensed by the Central Insecticides Board?

Reply: The classification decision of 2007, done by the customs authorities, was meant for charging of appropriate customs duty. For further clarification on import licensing, please see reply to the first question.

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