

Committee on Import Licencing

NOTIFICATION UNDER ARTICLES 1.4(a) AND 8.2(b)
OF THE AGREEMENT ON IMPORT LICENSING PROCEDURES¹

Questions from JAPAN to INDIA

The following communication, dated 24 April 1998, has been received from the delegation of Japan concerning the notification provided by India under Articles 1.4(a) and 8.2(b) of the Agreement.¹

I. GENERAL

1. Import restrictions

(a) Please confirm that all non-tariff restrictions imposed by India on imports are included in Chapter 15 of the Export and Import Policy: 1 April 1997-31 March 2002 published by the Ministry of Commerce, Government of India ("Export and Import Policy, 1997-2002"), except for those which are newly introduced pursuant to Public Notice No. 60, dated 12 December 1997. If India maintains any other import restrictions, please provide us with a list of the restrictions with descriptions of their objectives and measures.

(b) With respect to the aforesaid non-tariff import restrictions (except for those taken for balance-of-payment reasons and presently committed by India to be removed by 2003), please explain how the import restrictions help achieve its objective, in particular, in a more efficient manner than any other less trade-restrictive alternative measures.

(c) For what purpose does India maintain the schemes of the Duty Entitlement Pass Book, and Duty Free Licence, which consists of Advanced Licence, Advanced Immediate Licence, and Special Imprest Licence, as mentioned in Chapter 7 of the Export and Import Policy, 1997-2002, including those on second-hand products? When were these measures introduced? Does India maintain any other import duty exemption or reduction scheme (including tariff quotas)? If yes, please explain such duty exemption or reduction schemes, in particular, their objectives. Has India notified them to the Committee? If not, why?

2. Special Import Licence

(a) We understand from the text of the Export and Import Policy, 1997-2002, that a Special Import Licence may be granted only to importers of those goods which its Chapter 15 enumerates as those which are under non-tariff import restrictions. Is this understanding correct? If not, please indicate the other items covered by this Licence scheme but not listed in Chapter 15.

¹G/LIC/N/1/IND/1/Rev.1.

- (b) Please confirm whether a Special Import Licence may be granted to importers of any such goods enumerated in Chapter 15. Please specify what items are not covered by the scheme, if any, and why they are not covered.
- (c) Please explain all benefits entitled to holders of a Special Import Licence or otherwise related to the Licence. In particular, is normal tariff on imports exempted or reduced? Is this benefit also transferable?
- (d) Please specify the objective of the Special Import Licence scheme. Explain how this scheme helps to achieve its objective best among all alternative measures.
- (e) Please explain all qualifications for Special Import Licence. Please further provide us with the text of all legal instruments setting forth the qualifications and operations of this licensing scheme.
- (f) Please confirm whether the Special Import Licence scheme will survive or terminate upon the scheduled removal of corresponding import restrictions taken for BOP reasons, and why. Please specify items on which the Special Import Licence survives, if any.
- (g) Paragraph 11.13 of the Export and Import Policy, 1997-2002 states that the "Special Import Licence shall be freely transferable". Please confirm that there is no regulation on their transfer price.
- (h) The Export and Import Policy, 1997-2002 indicates the scheme of recognition of "established exporters", and four categories of such exporters. Please explain the objective of this scheme and classification.

3. Licensing procedure

- (a) Do the laws of India provide for a deadline for responses to applications for import licences? If not, why?
- (b) Is the Government of India obligated to indicate reasons to applicants when it rejects applications? If not, why?
- (c) How many Special Import Licences has the Government granted and denied in the latest one-year period? What is the duration of the average period between the date of application and that of grant or denial?
- (d) Please explain why the BOP reason justifies the "canalization" of India, as specified in WT/BOP/N/11.

4. Decentralization policy

- (a) It is reported that the Government of India is planning to announce further decentralization in import licensing on 13 April 1998. Is the central Government delegating its power to issue import licences to its regional branch offices, or local governments?
- (b) What is the objective of decentralization? Also, please explain how the proposed decentralization helps to achieve the objective? In particular, please explain why either of the regional branch offices and local governments are preferred to others in pursuit of the objective of decentralization.
- (c) Please explain how the Government ensures that delegated powers will not be arbitrarily exercised to the advantage of local producers of subject products. In particular, please provide us

with publications of detailed and clear-cut guidelines for import licences, and deadlines for responses to applications. Further, do applicants have the right to request the disclosure of reasons for denial of import licences? If the Government has not taken these measures, please explain why.

II. NEW AUTO POLICY²

1. The Government of Japan has an "advance copy" of the Indian Ministry of Commerce's Public Notice No. 60, dated 12 December 1997. The advance copy states that the notice was "to be published in the Gazette of India Extraordinary".

- (a) Was Public Notice No. 60 published in the Gazette of India Extraordinary (the "Gazette")?
- (b) If so, when? If not, when will it be published in the Gazette?
- (c) Is the copy of Public Notice No. 60 published in the Gazette identical to the advance copy? If not, please provide a copy of the Notice as published in the Gazette and please describe the changes made and the reasons for such changes.
- (d) When did Public Notice No. 60 take effect? Where is this effective date specified?

2. Legal authority for Public Notice No. 60:

- (a) Does the Export and Import Policy, 1997-2002 provide the legal authority for Public Notice No. 60?
- (b) Please provide a copy of the Export and Import Policy, 1997-2002.
- (c) When was the Export and Import Policy, 1997-2002 promulgated? Was it published in the Gazette? If so, when? If not, why?
- (d) Are there any other measures, whether legislative or administrative, that provide any legal authority for Public Notice No. 60? If so, please provide a copy of each such measure.
- (e) Does the Deputy Director of Foreign Trade have the authority to promulgate Public Notice No. 60? Does the Director of Foreign Trade? If Public Notice No. 60 was formally approved by any other government officials, please provide a copy of each document evidencing such approval.

3. Other than Public Notice No. 60 and the Export and Import Policy, 1997-2002, are there any other measures (including laws, decrees, regulations, instructions, and other implementing acts) relevant to entering memoranda of understanding with automobile manufacturers and/or granting licences to import CKD/SKD kits/components? Please provide a copy of each such measure.

4. Definition of "CKD/SKD kits/components":

- (a) What is meant by the term "CKD/SKD kits/components" as used in Public Notice No. 60?
- (b) In particular, please distinguish that term from the term "components". That is, what distinguishes the import of automotive components from the import of "CKD/SKD kits/components"?

²Please note that the questions in Section II are the same as those posed by Japan in respect to the new Auto Policy of India at the meeting of the Committee on Trade-Related Investment Measures held on 16 March 1998. Therefore, responses to these questions will be considered as responses to the questions contained in this Section.

- (c) Where is the term "CKD/SKD kits/components" defined in India law?
- (d) Please compare the term "CKD/SKD kits/components" with the term "components for motor vehicle in ckd/skd form", which is also used in Public Notice No. 60. Where is this term defined in Indian law?
5. Please provide a copy of the standard licence issued by the Government of India for importation of "components for motor vehicle in ckd/skd form". If a different licence is issued for imports of "components" or "CKD/SKD kits/components", please provide a copy of that too.
6. The 1995 Parameters:
- (a) Were the 1995 Parameters, which are referenced in Public Notice No. 60, published in the Gazette? If so, when? If not, why?
- (b) Please provide a copy of the 1995 Parameters.
- (c) Were the 1995 Parameters repealed or do they remain in effect?
- (d) Why were the 1995 Parameters changed? What are the "changed circumstances" referenced in Public Notice No. 60?
- (e) What procedures were followed for revising the 1995 Parameters? In particular, were the proposed revisions published (or otherwise provided to affected parties) before they took effect, was there opportunity for public comment about the proposed revisions, and if so were any changes made to the proposed revisions as a result of the public comments? If they exist, please provide a copy of the proposed revisions and of each public comment submitted.
7. Lists of MOUs:
- (a) Please provide a list of all companies that had entered memoranda of understanding with the Government of India pursuant to the 1995 Parameters. For each such company, please also indicate the name of the foreign joint venture partner and the current status of the memorandum of understanding.
- (b) Please provide a list of all companies that have entered memoranda of understanding with the Government of India pursuant to Public Notice No. 60. For each such company, please also indicate the name of the foreign joint venture partner.
8. The Standard Form MOU:
- (a) Is approval granted automatically to any memorandum of understanding submitted by any company that comports with the standard format that was printed as an appendix to Public Notice No. 60?
- (b) If not, what other standards apply? Where are those standards specified in Indian law?
- (c) Who is the authority responsible for deciding whether to approve a memorandum of understanding? How much, if any, discretion does that official have in making such decisions? Where are the authority and the level of discretion specified in Indian law?
- (d) Have any of the memoranda of understanding entered to date pursuant to Public Notice No. 60 differed in any respect from the standard format?

(e) If so, please describe the variations that have been approved to date. Have these approved variations been publicized? Will future applications that conform with these approved variations be [approved automatically] [treated as if they conformed fully with the standard format]? If not, please explain under what circumstances variations that have been approved previously will be approved again.

(f) Even if the Indian Government to date has not entered any memoranda of understanding that differ in any respect from the standard format, is it allowed to do so under Indian law? If so, please explain who has the authority to accept or reject a memorandum that differs from the standard format, what standards apply to such decisions, how much discretion the deciding authority has, whether approved variations will be publicized, and whether variations approved once will automatically be approved for subsequent applicants.

9. Pending applications:

(a) Are there any companies that have submitted memoranda of understanding to the Government of India for its approval pursuant to Public Notice No. 60, but for which the Government has not yet approved or denied the submission? If so, please list all such companies, the name of the foreign joint venture partner, and the date on which it submitted the memorandum of understanding for the Government's approval.

(b) Are memoranda of understanding submitted to the Government of India for its approval considered strictly in the order in which they are submitted? If not, please explain what other factors influence the order of consideration.

(c) Are there any companies that submitted memoranda of understanding to the Government of India for its approval under the 1995 Parameters, but for which no action was taken by the Government when Public Notice No. 60 took effect? If so, please list all such companies and the name of the foreign joint venture partner and explain the current status of such submissions.

10. What is meant by the term "all existing entrants" as used in Public Notice No. 60? Does it include both those companies that entered memoranda of understanding with the Government of India pursuant to the 1995 Parameters and those companies, if there are any, that submitted memoranda of understanding to the Government of India for its approval, but for which no action was taken by the Government when Public Notice No.60 took effect?

11. Are there any companies that submitted memoranda of understanding to the Government of India for its approval (either under the 1995 Parameters or Public Notice No. 60), but for which such approval was denied? If so, please list all such companies, the name of the foreign joint venture partner, and the reason for the denial.

12. Impact on companies with pre-existing MOUs:

(a) Are there any companies that entered memoranda of understanding with the Government of India under the 1995 Parameters that have not yet entered revised memoranda of understanding under Public Notice No. 60?

(b) If so, what consequences, if any, have happened to such companies? Where are those consequences specified in Indian law?

(c) If not, how much time have such companies been given to enter revised memoranda of understanding? Where is that period of time specified in Indian law? What are the consequences for

such companies that do not enter revised memoranda of understanding within the specified period of time? Where are those consequences specified?

13. Were companies that entered memoranda of understanding under the 1995 Parameters provided any compensation due to the Government of India's unilateral decision to change the terms of the understanding? If so, how was the amount of compensation determined? If not, why?

14. What assurances, if any, do companies have that the Government of India will not unilaterally require any further changes to the terms of the memoranda of understanding?

15. What is the legal status under Indian law of memoranda of understanding entered pursuant to Public Notice No. 60? Where is this status specified in Indian law? Is the status the same as the status of memoranda of understanding entered under the 1995 Parameters and, if not, how are they different?

16. Are imports of automotive components, other than components in "ckd/skd form", restricted by the Export-Import Policy? If so, please explain how they are restricted, where those restrictions are specified in and authorized by Indian law, and what conditions must be satisfied to import such components.

17. Does the Export-Import Policy restrict imports of "CKD/SKD kits/components" by Indian companies other than joint venture companies? If so, what conditions must be satisfied by such companies to obtain import licences and where are those conditions specified in and authorized by Indian law? If there are any differences between conditions applicable to joint venture companies and other Indian companies, please explain.

18. Public Notice No. 60 contrasts the term "manufacture of cars" with the term "mere assembly of imported kits/components". What is meant by these two terms? In particular, please explain the differences between these two terms. Where are these terms defined in Indian law?

19. Required minimum foreign equity:

(a) What is the purpose of requiring joint venture partners to contribute a minimum of US\$50,000,000 in equity?

(b) What impact does this requirement have on India's international trade?

(c) Why is this requirement limited to joint venture companies with majority foreign ownership?

(d) Why is this requirement limited to new joint venture companies?

(e) How does this requirement apply to a joint venture company that does not have majority foreign ownership at the time it enters the memorandum of understanding with the Indian Government, but the foreign partner subsequently obtains a majority ownership? Does it matter how long after the joint venture enters the memorandum of understanding that majority ownership is obtained?

(f) How does this requirement apply to a joint venture company that has majority foreign ownership at the time it enters the memorandum of understanding with the Indian Government, but the foreign partner subsequently loses majority ownership? Does it matter how long after the joint venture enters the memorandum of understanding that majority ownership is lost?

20. Definition of "indigenisation":

- (a) What is meant by the term "indigenisation" as used in Public Notice No. 60? Where is that term defined in Indian law?
- (b) What standards are used to determine whether an automotive component is an "indigenous" component for purposes of the "indigenisation" requirement of Public Notice No. 60? In particular, is the determination based on a percentage of value-added, sub-components, or materials? What percentage? Where are these standards specified in Indian law?
- (c) Who makes the determination whether an automotive component is an "indigenous" component for these purposes? Where is that authority specified in Indian law?
- (d) When is the determination made whether an automotive component is an "indigenous" component for these purposes? Where is that timing specified in Indian law?
- (e) For purposes of determining whether a joint venture company is in compliance with the minimum percentage of "indigenisation" of components, what is the denominator in the equation? That is, what is the basis for measuring the total number of components that is to be divided into the number of "indigenous" components to determine the percentage of "indigenisation"? Is the denominator based on the total number of components alone or is it value-weighted? If value-weighted, what method of valuation is used? Where is this methodology specified in Indian law?
- (f) Over what period of time is the "indigenisation" level measured? A calendar year? A fiscal year? A quarter? A month? The production at the end of the year? Where is this period specified in Indian law?
- (g) Is a joint venture company entitled to regard components purchased in India as "indigenous" regardless of whether or not the vendor of the components imported them? If not, please explain what obligations the purchaser has to obtain information and documentation from the vendor and what is the authority for those obligations in Indian law.

21. Compliance with the "indigenisation" requirement:

- (a) Who determines whether a joint venture company has met the "indigenisation" requirement in the third and fifth year? Where is that authority specified in Indian law?
- (b) What is meant by the terms "in the third year" and "in the fifth year"? That is, by what dates must a joint venture company meet the minimum "indigenisation" requirements?
- (c) What are the consequences for failing to meet the minimum "indigenisation" requirements? Does it mean that no more import licences will be granted? Do the same consequences apply in the third year and in the fifth year? Does it matter by how much the joint venture company falls short of the minimum requirement? How much discretion does the Indian Government have in making these decisions? Where are these consequences specified in Indian law?
- (d) What happens if a joint venture company fails to meet the 50 per cent requirement in the third year, but meets it in the fourth or fifth year? What if it still fails to meet the 50 per cent requirement in the fifth year? What happens if a company fails to meet the 70 per cent requirement in the fifth year, but meets it in a subsequent year?

(e) What is meant by the phrase "no need for further import licences"? Does this mean that a joint venture that has reached the 70 per cent "indigenisation" level may import as many components or "CKD/SKD kits/components" as it needs thereafter?

(f) What happens after a company meets the 70 per cent "indigenisation" level? Does it have any further obligations to report to the Indian Government or submit to Government review of its "indigenisation" level? If so, what happens if it is found that the company has subsequently fallen below the 70 per cent level?

(g) Does a company that reports to the Indian Government that it has met the 70 per cent requirement immediately "go outside the ambit of the MOU automatically" and can it submit such a report at any time or only in the annual report? Or, must the Government determine that a company has met the 70 per cent requirement before it goes "outside the ambit of the MOU"? If the latter, where is the requirement of government determination specified in Indian law?

(h) What is meant by the phrase "go outside the ambit of the MOU automatically"? Does this mean that all obligations of the memorandum of understanding terminate immediately, except for the previously incurred export obligation? Specifically, do the reporting and review requirements terminate? If a joint venture company meets the 70 per cent "indigenisation" requirement before the foreign partner contributes US\$50,000,000, must the equity contribution still be made?

22. Why do the new "indigenisation" requirements apply to companies that had already entered memoranda of understanding under the 1995 Parameters?

23. What is meant by the phrase "the party shall aggressively pursue and achieve as soon as possible the development of the local supply base and increase local content" as used in the standard format memorandum of understanding? Does this create any obligation on joint venture companies to do anything other than complying with the minimum "indigenisation" levels specified in Public Notice No. 60? What is the authority for this phrase under Indian law? Is such a requirement, if any, a condition for import licence? If yes, please show what legal instrument indicates this.

24. Scope of the export obligation:

(a) What is meant by the phrase "achieve a broad neutralization of foreign exchange"? Does it require anything other than "balancing" "the actual CIF value of imports of CKD/SKD kits/components and the FOB value of exports of cars and auto components"?

(b) Is there an obligation to "balance" imports of "components" other than "CKD/SKD kits/components"? If so, what is the authority for that obligation under Indian law?

(c) Is there an obligation to "balance" purchases in India of imported "components" or "CKD/SKD kits/components"? If so, what is the authority for that obligation under Indian law?

(d) If the answer to part (c) above is "yes", is there an obligation to enquire whether components purchased in India are "indigenous" to India and, if they are not, to document their "actual CIF value"? If so, what is the authority for that obligation under Indian law? Is a joint venture company entitled to rely in good faith on representations made by vendors of components?

(e) Must the value of imports made in the first two years be "balanced" or only imports made beginning in the third year?

(f) What is meant by the phrase "the EPCG related export obligation" as used in Public Notice No. 60? Please provide copies of the government measures (including laws, decrees, regulations, instructions, and other implementing acts) relevant to "the EPCG related export obligation".

(g) What is meant by the phrase "the export obligation would be met by export of cars as well as auto components" as used in Public Notice No. 60? Is there an obligation to export both cars and auto components or will export of sufficient quantities of either one satisfy the export requirement?

(h) Are these obligations, if any, conditions for import licence? If yes, where is it specified in Indian law?

25. Compliance with the export obligation:

(a) What is meant by the phrase "the value of imports of CKD/SKD may be regulated with reference to the export obligation fulfilled in the previous years" as used in Public Notice No. 60? In particular, what is meant by the phrase "with reference to"?

(b) Does this phrase require that the value of imports is automatically limited to the value of the previous year's exports? Or does the word "may" and the phrase "with reference to" mean that the Government has discretion in determining whether to limit imports and, if it does, in setting the amount of the limitation?

(c) If the Government has such discretion, who has the authority to exercise it and what standards apply? In particular, does the percentage of "indigenisation" influence the limitation on imports? Where are the authority and standards specified in Indian law?

(d) What happens if a company has met the 70 per cent "indigenisation" level, but has not yet started exporting? Will its imports be limited? If so, where is the authority to limit such exports specified in Indian law?

(e) Other than the import limitation starting in the fourth year, are there other consequences for failing to start exporting in the third year? In particular, are there any consequences that might be imposed during the third year? If so, where is the authority for those consequences specified in Indian law?

26. Why do the new export requirements apply to companies that had already entered memoranda of understanding under the 1995 Parameters?

27. Does the Government of India inform each joint venture company of the results of the Joint Annual Review with respect to it? Is the company given the opportunity to comment on the results? May the results be changed in light of the comments received? What steps are taken to ensure the confidentiality of sensitive information obtained as a result of the memoranda of understanding, annual reports, or Joint Annual Reviews?

28. What is meant by the phrase "under foreign collaboration" as used in Public Notice No. 60? In particular, how is this distinguished from a joint venture?

29. What policy purposes are intended to be furthered by Public Notice No. 60? Please answer generally and with respect to the changes from the 1995 parameters. Did the Government of India consider whether any other measures would further those policy purposes? If so, please explain what other measures were considered and why this measure was adopted.
