Committee on Trade in Industrial Products

Group 4 - Licensing

REPLIES TO QUESTIONNAIRE ON LICENSING

KENYA

Revision

Outline of the system

1. Import and export licensing is administered by the Department of Trade and Supplies, Ministry of Commerce and Industry, Government of the Republic of Kenya under the authority conferred by the Import, Export and Essential Supplies Act. Most of the goods are imported into Kenya under an authority of an Open General Licence (OGL) i.e. no import licence is required. However, commodities which are manufactured in Kenya and others which are distributed through the State Trading Corporation are subject to the issue of a specific import licence.

Purpose and coverage of licences

2. The purpose of import licensing is mainly for the protection of local infant industries and, therefore, products not produced in the country are not subject to import licensing and can, as such, be imported under an authority of an Open General Licence.

3. The import licensing system is operated on a non-discriminatory basis.

4. Import licensing is intended to restrict the quantity of imports by value. The only alternative system is higher tariffs, but this has not proved to be the most feasible method of protecting local industries. Import licensing is maintained under the authority of the Import, Export and Essential Supplies Act.

5. Import licensing is statutorily required for those products which are from time to time gazetted in the official Kenya Gazette. Legislation does not leave the designation of products to administrative discretion. The Government can add, delete or amend any item placed on import licensing list under authority desired from the Act administratively.

6. (a) The formalities concerning the filing of applications for licences are derived from the Import, Export and Essential Supplies Regulations which are published as an addendum to the Act. Where quotas are allocated,
the individual importers are advised as normally, the quotas are based on the past performance of the importer. Foreign governments and export promotion bodies of exporting countries are advised that a particular item is on quota or a price-wise restriction. Quotas are not allocated to any individual country, but to an individual Kenyan importer.

(b) Quotas are normally determined on a yearly basis, but licences are issued either on a quarterly or six-monthly basis. Where quotas are issued on a quarterly or six-monthly basis, the importer needs to apply for an import licence during that particular period.

(c) Import licences are not allotted for certain goods to domestic producers of light goods as these are issued on the past performance of the importer. Records indicate that quotas are normally fully utilized. Names of importers to whom quotas have been issued can be made available to foreign governments and export promotion bodies of exporting countries upon request.

(d) Once importers' quotas are established, an import licence can be issued immediately.

(e) The minimum length of time for processing application for import licences is three days and the maximum ten.

(f) Import licences are issued with a validity of four months for the shipment of goods from the date when the licence is issued.

(g) Import licence applications are considered by the Department of Trade and Supplies and the importer does not have to approach any other department for the issue of the same.

(h) Import licences are issued on the basis of past performance where such a performance is required or on the basis of a price-wise restriction. The quota is normally determined on the basis of past performance of the importer. New importers are allotted a newcomer's quota.

(i) There are no bilateral quotas or restraints and hence import licences are issued subject to the regulations being complied with.

(j) Importation is not tied to export and there is no understanding with foreign countries that particular imports will be allowed on the basis of export permits.

(k) There are very few instances where import licences are issued on the condition that the goods should be re-exported and this is done on specific application from the importer. However, any such goods imported have got to be kept in customs bond pending re-export.
7. (a) Application for an import licence must be made at least fifteen days in advance of importation. Where goods arrive within shorter time-limit without a licence, import licence may be issued at the discretion of the Director of Trade and Supplies.

(b) An import licence can be granted immediately upon request if it complies with all the requirements and on the discretion of the Director of Trade and Supplies.

(c) There are no limitations as to the period of the year during which application for an import licence may be made.

(d) Consideration of import licence applications is effected by a single administrative organization i.e. the Department of Trade and Supplies, Ministry of Commerce and Industry.

8. Application for an import licence is not refused if it meets the required criteria. Applicants have a right of appeal in the event of refusal to issue a licence to the Director of Trade and Supplies, Department of Trade and Supplies, Ministry of Commerce and Industry.

Eligibility of importers to apply for licence

9. All firms and institutions established and registered in Kenya are eligible to apply for an import licence. Business firms need to be registered under the Companies Act and societies and institutions need to be registered under the Societies Act.

Documentational and other requirements for application of licence

10. Application for an import licence has to be submitted in the form of a typed indent in quadruplicate and include the following information:

(i) The name and address of the applicant;
(ii) The name and address of the supplier;
(iii) The description of the goods to be imported, showing the quantity and price per unit in Kenya shillings as well as the relevant SITC number;
(iv) The total cost, insurance and freight, value of the goods at the place of importation expressed in Kenya Shillings;
(v) The country of origin of the goods;
(vi) The place from which the goods are intended to be consigned, and the intended date of consignment;
(vii) The method of payment for the goods;
(viii) Indents have to be stamped and signed by the importer.
11. Upon importation, an importer is required to produce the supplier's invoice and the bill of lading.

12. There is no licensing fee or administrative charge for the issue of import licences.

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

Conditions of licensing

14. The period of validity of a licence is four months. Normally the licences are not extended and unless valid reasons for the same are submitted by the importer in writing to the Director of Trade and Supplies at least fifteen days prior to the expiry of the import licence.

15. There is no penalty for the non-utilization of an import licence.

16. Import licences are not transferable between importers.

17. No other conditions are attached to the issue of an import licence.

Other procedural requirements

18. There are no other administrative procedures required prior to importation.

19. Foreign exchange is automatically provided by commercial banks for goods to be imported as long as these licences are accompanied by a Foreign Exchange Allocation Licence issued by the Central Bank of Kenya through the Department of Trade and Supplies, Ministry of Commerce and Industry. Certain non-essential items which are not subject to specific import licensing require a Foreign Exchange Allocation Licence issued by the Central Bank of Kenya through the Department of Trade and Supplies.