CHAPTER VI
EXPORT REGULATIONS

INDIA

Export Authority and Procedure

Food exportation from India is regulated by Directorate General of Foreign Trade under Ministry of commerce. Under Foreign Trade (Development and Regulation Act), 1992, the Central Government has notified the Foreign Trade Policy.

Every exporter shall comply with the provisions of the Foreign Trade (Development and Regulation) Act, 1992, the Rules and Orders made there under, the provisions of this Policy and the terms and conditions of any License/certificate/ permission/Authorization granted to him, as well as provisions of any other law for the time being in force.

The interpretation of any provision contained in the Policy shall be referred to the Director General of Foreign Trade.

Besides formulating and implementing the foreign trade policy, the Department of Commerce is also entrusted with responsibilities relating to multilateral and bilateral commercial relations, state trading, export promotion measures and development and regulation of certain export oriented industries and commodities.

Foreign Trade (Development and Regulation) Act, 1992 (FTDR)

FTDR is the Act for development and regulation of foreign trade by augmenting exports from India and for matters connected therewith or incidental thereto.

1 www.commerce.nic.in
The FTDR elaborates the following:

1. Power of Central Government to make orders and announce Export and Import Policy
2. Importer-Exporter Code Number and License (IEC number)
3. Search, Seizure, Penalty and Confiscation
4. Appeal and Revision

Countries of Export

Unless otherwise specifically provided, export will be valid to any country.

Application for Grant of Export License

An application for grant of Export license/certificate/permission in respect of items mentioned in Schedule 2 of ITC(HS) may be made in the ‘Aayaat Niryaat Form’, to the Director General of Foreign Trade and shall be accompanied by the documents prescribed therein. The Foreign Trade Facilitation Committee shall consider applications on merits for issue of export license/certificate/permissions.

Profile of Exporter

Each exporter shall be required to file exporter profile once with the Regional Authority in Part 1 of ‘Aayaat Niryaat Form’. Regional Authority shall enter the information furnished in Part 1 of ‘Aayaat Niryaat Form’ in their database so as to dispense with the need for asking the repetitive information. In case of any change in the information given in Part 1 of ‘Aayaat Niryaat Form’, exporter shall intimate the same to the Regional Authority.

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6 http://www.dgft.org/IEC_Code.html
7 Ibid.
Application for grant of IEC number

An application for grant of IEC number shall be made by the Registered/Head Office of the applicant to the Regional Authority under whose jurisdiction, the Registered office in case of company and Head office in case of others, falls in the ‘Aayaat Niryaat Form’ and shall be accompanied by documents prescribed therein.

No export shall be made by any person without an Importer-Exporter Code (IEC) number unless specifically exempted. An Importer-Exporter Code (IEC) number shall be granted on application by the competent authority in accordance with the procedure specified.8

Quality Certification

It has been a constant endeavor to promote quality standards in the export product/units manufacturing the export product.9

Application for Grant of Status Certificate

For grant of One to Five Star Export House, the application shall be filed by exporters of goods and services shall be filed in ‘Aayaat Niryaat Form’.

However, any exporter irrespective of whether he is a status holder or not can apply afresh in ‘Aayaat Niryaat Form’ for grant of status or upgradation of his existing status.10

Other Authorities

1) Commodities Boards

There are five statutory Commodity Boards under the Department of Commerce. These Boards are responsible for production, development and export of tea, coffee, rubber, spices and tobacco.11

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8 Ibid.
10 Id. at 48.
a) **Tea Board:**

No one can export tea from India unless he obtains license from Tea Board under the provision of Tea (Distribution & Export) Control Order 1957.

Obtaining an Exporter’s License Persons who wish to obtain license from Tea Board should apply in Form A. A license fee has to be submitted along with the filled form. The filled in application form duly signed by the authorized representative of the firm/company should be submitted with the photocopies of the following documents:

Documents relating to status of the Firm/Company\(^{12}\)
- Trade License etc
- SST, CST with tea
- Income Tax clearance certificate
- Banker’s certificate indicating the financial status of the company/firm

**Information sought from licensed Tea Exporters**

Tea Board requires the following information to be submitted by an Exporter who has been granted permanent license.

- Photocopies of the shipping bill in relation to tea export
- Monthly tea export return on a regular monthly basis
- Annual tea export return\(^{13}\)

**Quality assurance in Tea Export**

Tea is covered under the Prevention of Food Adulteration Act 1954 and PFA Rules 1955. Rule 5 of PFA Rule 1955 stipulates standards of quality of various articles of food including tea. The specifications as laid down in PFA in relation to tea are more or less similar to that of ISO 3720.

\(^{11}\)Part VII, *Rationalisation of the functions, activities and structure of the Department of Commerce*, 12.

\(^{12}\)http://www.vuatkerala.orz/static/ens/trade/azri/tea/trade_facilitation_services.html

\(^{13}\)Ibid.
Importers of tea generally require quality assurance certificate from the Indian exporters duly certified by the agency designated by the importer.

However, in order to ensure quality of tea exported from India a voluntary scheme of quality assurance towards export of tea from India has already been introduced by Tea Board.

**b) Spice Board:**

Certificate of Registration as Export of Spices issued by the Board is also required in addition to IE Code No. Spices Board issues Certificates of Registration for export of spices under Section 11 of the Spices Board Act.

Quality evaluation: The Quality Evaluation Laboratory of the Spices Board was established in 1989. It provides analytical services to the Indian spice industry and monitors the quality of spices produced and processed in the country.

Spices Board Scheme for Laboratory Accreditation- The Board has introduced a scheme viz: "Spices Board Scheme for Laboratory Accreditation" for accreditation of laboratories. Under the above scheme, Board's laboratory will certify laboratories in private sector/laboratories attached to spice industries, as per the terms and conditions for accreditation.

A number of private laboratories are engaged in Inspection and Quality Control of spices for export. These laboratories offer analytical service as well as inspection and quality control certification as desired by the exporters or as per the requirements of buyers' specifications.

**Quality Standards in spices**

BIS has prescribed quality standards for 16 spices, spice powders, concentrates and oleoresins. Spices Board actively interacts with BIS in finalizing standards for other spices and to upgrade the existing ones\(^{14}\).

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AGMARK

The Government of India has prescribed standards for almost all spices, pepper, dry ginger, cardamom, dry chillies, turmeric, garlic, coriander, fennel, fenugreek, cumin and celery seeds and curry powder are graded compulsorily under law before export. The grades adopted for various spices are those prescribed under the Agricultural Produce (Grading and Marking Act 1937); and these Grades are popularly known as Agmark Grades. The scheme of compulsory Quality Control and Pre-shipment Inspection on certain spices was introduced by the Government of India in 1963 and from then on. The scheme is being introduced to cover all the spices in a phased programme. The pre-shipment inspection scheme is operated by the Directorate of Marketing Inspection, Ministry of Agriculture, Government of India.15

2) Export Inspection council:

The Export Inspection Council (EIC) was set up by the Government of India under Section 3 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), in order to ensure sound development of export trade of India through Quality Control and Inspection and for matters connected thereof.

EIC is an autonomous body and is responsible for the enforcement of quality standards and compulsory pre-shipment inspection of the various commodities meant for export and notified under the Export (Quality Control & Inspection) Act, 1963.16

EIC is an advisory body to the Central Government, which is empowered under the Act to:

1) Notify commodities which will be subject to quality control and/ or inspection prior to export,

2) Establish standards of quality for such notified commodities, and

16 http://www.eicindia.org/eic/about.htm
3) Specify the type of quality control and/or inspection to be applied to such Commodities\textsuperscript{17}.

Export Inspection Council, either directly or through Export Inspection Agencies, its field organization renders services in the areas of:

a) Certification of quality of export commodities through installation of quality assurance systems (In-process Quality Control and Self Certification) in the exporting units as well as consignment wise inspection.

b) Certification of quality of food items for export through installation of Food safety Management System in the food processing units.

c) Issue of Certificates of origin to exporters under various preferential tariff schemes for export products\textsuperscript{18}.

**Laboratory Services**

EIC has a network of laboratories that form the backbone of the export inspection and certification activities of EIAs besides being offered to other clients on commercial basis wherever extra facilities or capacity is available. The main food laboratories in Chennai, Delhi, Kolkata, Kochi and Mumbai are supplemented by a number of field laboratories attached to various sub–offices for routine microbiological analysis of Fish & Fishery Products. The main laboratories other than the one at Delhi, which is for food grain testing, are equipped to cater to the analytical requirements of a variety of agricultural and food products to include frozen fish and fishery products, fruits and vegetable products, canned products, whole and ground spices, diary products, alcoholic beverages, cereals and their products, tea and coffee, raw and roasted nuts.\textsuperscript{19}

\textsuperscript{17} Ibid.
\textsuperscript{18} Ibid.
\textsuperscript{19} [http://www.eicindia.org/eic/other/lab_services.htm](http://www.eicindia.org/eic/other/lab_services.htm)
**Consignment wise Inspection:**

Under the Consignment wise Inspection (CWI), each export consignment is inspected and tested by the recognized inspection agencies. Samples are drawn on the basis of statistical sampling plans inspected and tested for verifying the conformity of products to the prescribed standards. Tests are carried out in the field an/or in the recognized inspection agencies’ laboratories.

If found export worthy after inspection, a certificate is issued for the consignment. Depending on the nature of the consignment the certificate of inspection have varying validity periods on the expiry of which the consignments will be re-inspected for the purpose of revalidation of the certificate.

No consignment of any notified commodity can be exported unless it is accompanied by a certificate issued by a recognized inspection agency or it carries a recognized mark, as may be applicable to it.  

**In-process quality control**

The In-Process Quality Control system lays emphasis on the responsibility of manufacturer’s, processors in ensuring consistency in quality during all stages of production by adopting quality control skills and exercising control on raw materials and bought-out components, manufacturing process, packing and final testing.

Manufacturing and processing units, adjudged as having adequate levels of quality control in all these areas, are approved by EIAs based on the assessment of an Inter Departmental Panel. Units approved under this system are eligible to get certificate of export worthiness without further verification of the quality of the outgoing consignments by EIAs and random spot check of the consignments are carried form time to time. Under the simplified inspection procedure, such units

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20 http://www.eicindia.org/eic/inspection/cwi.htm

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have been given the option either to issue certificate of inspection of export worthiness on their own or to obtain certificate of inspection from EIAs.\textsuperscript{21}

3) Marine Products Export Development Authority (MPEDA)

The MPEDA was set up under Section 4 of MPEDA Act, 1972. It is a statutory body functioning under the Department of Commerce. The MPEDA, a statutory body, is responsible for development of the marine products industry with special reference to exports\textsuperscript{22}.

**Objectives of the MPEDA**

- Conservation and management of fishery resources and development of offshore fishing.
- Registration of exporters and processing plants.
- Regulations of marine products export.
- Laying down standards and specifications.
- Acting as an agency for extension of relief as per directions from Government.
- Helping the industry in relation to market intelligence, export promotion, and import of essential items.
- Imparting training in different aspects of the marine products industry, with special reference to quality control, processing and marketing.
- Promotion of commercial shrimp farming.
- Promotion of joint ventures in aquaculture, production, processing and marketing of value added seafood\textsuperscript{23}.

\textsuperscript{21} \url{http://www.eicindia.org/eic/inspection/quality.htm}
\textsuperscript{22} \url{http://commerce.nic.in/autobodi.htm\#MPEDA}
\textsuperscript{23} \url{http://www.mpeda.com/NodalAgency/NodalAgency.htm}
4) Agricultural and Processed Food Products Exports Development Authority (APEDA)

The APEDA was set up by an Act of Parliament of 1986. The APEDA is also a statutory body which is entrusted with the tasks of agricultural exports, including the export of processed foods in value added form.

APEDA undertakes the following development programs:

- Development of Data Base on Products, Markets and Services.
- Publicity and information Dissemination.
- Invites official and business delegations from abroad.
- Organization of Product Promotions abroad and visits of official and trade delegations abroad.
- Participation in International Trade Fairs in India and abroad.
- Organization of Buyer-Seller Meets and other business interactions.
- Information Dissemination through APEDA’s Newsletter, Feed Back Series and Library.
- Distribution of Annual APEDA Awards.
- Provides recommendatory, advisory and other support services to the Trade and Industry.
- Problem solving in Govt. Agencies and Organizations, RBI, Customs, Import/Export.
- Procedures, Problems with Importers through Indian Missions abroad.

Regulation of export of Peanuts from India to EU through monitoring of pesticides residues

The Government of India, notified that the export of peanuts to the European Union shall be subject to issue of Export Certificate by Agricultural and Processed Food Products Export Development Authority (APEDA). It is essential to establish adequate controls to eliminate possibilities of presence of the residue.

24 http://commerce.nic.in/autobodi.htm#AGRI
25 http://www.indiabizclub.com/gzrmpms?g=-0ic0t0mphbws306aki
levels of toxins and contaminants in food commodities in excess of prescribed levels. In order to ensure control of aflatoxin residues in peanuts and peanut products meant for exports to the EU, superseding the existing trade notice, APEDA lays down the certain procedure.26

**Objective:**

a) To establish a system for controlling residues of aflatoxins in exportable peanuts or peanut products.

b) To establish a system of appropriate labeling in each bag/package/lot of peanuts or peanut products meant for exports.

c) To ensure that peanuts or peanut products exported from India to the EU do not test for aflatoxin residues in excess of the prescribed levels.

5) **Directorate of Plant Protection**

Regulation of export of Fresh grapes from India to EU through monitoring of pesticides residues.

Directorate of Plant Protection, Quarantine and Storage, Department of Agriculture and Co-operation, Ministry of Agriculture, advised all Phyto Sanitary Certificate (PSC) issuing officers to check/verify pesticide residue certificates for grapes exported to the European Union before issuance of PSC to the exporters. In order to ensure implementation of these instructions, a procedure has been developed in this Regulation of export of fresh grapes through control of pesticide residues for export of fresh grapes from India.

**Objectives:**

a. To establish a system for controlling residues of pesticides in exportable table grapes at the farm and plot level.

b. To monitor pesticide residues in soil and water at grape farms or plots and pack houses.

c. To establish a surveillance system for controlling residues of pesticides allowed/recommended by the National Research Centre for Grapes for

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26 [http://www.iopea.org/not_gnuts.htm](http://www.iopea.org/not_gnuts.htm)
cultivation of grapes as well as for traces of other pesticides, this might be found due to previous use on the land.

d. To establish a system for corrective action in the event of detection of residue levels higher than those established through this RMP.

e. To establish a system for corrective action in the event of issuance of an Internal Alert Information.

f. To ensure that grapes exported from India to the European Union do not test for pesticide residues in excess of the prescribed levels\(^{27}\).

**EUROPEAN UNION**

**Export Authority and Procedure**

Council Regulation (EEC) No 2603/69 established common rules for exports from EU Common rules for exports from the European Community (EC) is established based on the principle of freedom of export and to define the procedures enabling the Community to implement, where necessary, the surveillance and protective measures required.

The exportation of products from the European Economic Community to third countries are free, that is to say, they are not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of the Regulation\(^{28}\).

Customs are involved in the implementation and enforcement of Community legislation relating to external trade, not only for customs duties and commercial policy measures, but also as regards security, environmental, anti-dumping, consumer protection, cultural and agricultural controls.

The most important control areas in which customs authorities have a control responsibility are:

\(^{27}\) [http://nrcgrapes.nic.in/National%20Referral%20Laboratory.htm](http://nrcgrapes.nic.in/National%20Referral%20Laboratory.htm)

- Controls of the nature and the amounts of duties applicable according to the correct description of commodity code, origin and customs value of goods.
- Controls of goods under customs supervision (goods in temporary storage and placed under certain customs procedures)
- Controls for security, safety and public health requirements
- Controls on compliance with environmental legislation.
- Controls on compliance with Common Agriculture Policy (CAP) rules.
- Controls on compliance with veterinary, phyto-sanitary, health and quality regulations²⁹

The export procedure is obligatory for Community goods leaving the EC customs territory. This is due to the fact that this procedure must ensure the correct application of all export measures, e.g.:

- export restrictions and surveillance measures, and
- payment of export refunds for agricultural products³⁰

Risk Management for Customs

Development of risk management at Community level is a prerequisite for addressing the challenge posed to the customs union by enlargement, for making progress on security concerns and to achieve equivalence in the application of customs controls. While the process of introducing legislative measures is underway there is a need to push on in parallel with a programme of practical implementation.

A standardized framework for the risk management process has been devised by a project group set up under the Customs 2002 programme. It is intended to be

flexible so that existing systems can be accommodated within the framework while providing the means to ensure there is a common EC approach.

This document sets out the basic agreed theoretical framework for the application of risk management. Future work is focused on the practical and effective implementation of the model.

The model sets out the key steps in the use of risk management by the customs administrations of the EU. It incorporates the various elements of a comprehensive approach to risk management, identifying 4 key steps:

- Context
- Risk Analysis
- Treatment
- Monitoring

These steps are represented in a diagram to show how each step is critical to the successful implementation and effective use of risk management.

**Putting Risk Management in context**

To implement a risk management policy there must be a strategic policy established by the stakeholders. For the EU this strategy has been established in the Customs strategy for the EU.\(^{31}\)

Risk Analysis

The three core elements to this step in the risk management process are:

1. Identify the risks

To identify the risks posed by illegal goods, all available information should be examined as potential sources of risk data, evaluated for accuracy and where appropriate, be made available to the operational service.

In respect of operators, the EU and Member States have worked together to create a Catalogue of Risk Indicators which supports the identification and assessment of risks for economic operators. This catalogue is an important source of information, which is available for customs services.

2. Analyse the risk

Using the risk data, and assessment of the risks in each aspect of the context should be undertaken.

Proven risk is historical fact, an irregularity has occurred and the organisation has a record of the incident and the facts surrounding the case. Lists of these risks can be analysed against current data to see if conditions surrounding the risk currently exist.

Potential risks are risks that have not yet been uncovered but are suspected. For example the development of a new commodity to which the owner assigns their Trade Mark, may become the target of others wishing to breach the owners intellectual property rights.

A key tool to assist in the identification and analysis of risk in the EU is the use of the Risk Information Form which is used by customs in their targeting of consignments.

3. Assess and weigh the risk

There are different types of ranking systems. The assessment into HIGH, MEDIUM, and LOW is widespread.
High risks are generally likely to arise and have severe effects. Treatment actions for these risks should be highly visible to senior management and possibly agreed in control plans.

Medium risks may be less likely to arise, or have less severe effects, but not necessarily both. Also with medium risks it is recommended to document the reasons for not acting.

Low risks are acceptable risks that can be assessed by standard or routine procedures or even where no action is necessary.

Address and treat the risk

Now it has been identified that a customs control needs to be carried out, a decision must be made as to how to carry out the control. Together with the EU Member States, the Commission is developing a common approach on the type of control that is considered to be the most effective to meet a specific risk. This initiative outlines the methods and moments of control. It identifies controls to be carried out at the moment of entry and exit of the customs territory / customs supervision, controls at the moment of assignment of goods for customs approved treatment or use and controls after customs approved treatment.

The type of controls that customs carry out to address the risk range from Customs supervision to documentary controls, physical controls, and audit based controls.

It also describes the control areas requiring attention, including controls by customs to protect public health and safety and controls to protect the environment.

Monitoring the system

It is necessary to monitor and review the performance in the use of risk management to assess the effectiveness and efficiency of the risk management system. Evaluation and review should be carried out on a regular basis by a regular mechanism.
The review must use information feedback from the process and lead to updating the analysis and prioritization of control work which is carried out by customs.

UNITED KINGDOM

Export Authority and Procedure

Department of Environment, Food and Rural affairs (DEFRA) as sponsor department for industries continues to work closely with individual sectors and key businesses to foster and promote greater competitiveness and to remove obstacles to growth.

The Government has an important role in ensuring that businesses and individuals are able to export animals and products by providing health guarantees to importing countries, normally by way of export health certification.

Exporting food to EU Member States

Exporters wanting to export live animals, animal products or germplasm to an EU Member State will likely need some form of documentation in the form of health certification signed by a government approved 'Official Veterinarian', or, in the case of some animal products, commercial documentation.

Exporting food to Non EU Countries

Exports of live animals, animal products to all destination countries outside the EU are subject to bilaterally agreed export health conditions (between the United Kingdom and the destination country).

Each country's import conditions are used as a basis to produce export health certification which is negotiated with the veterinary authorities of the relevant country. The "Exports Strategy Branch" of Defra's International Animal Health Division works closely with industry representatives across all species and products.

32 Ibid.
33 www.defra.gov.uk
34 http://www.defra.gov.uk/animalhs/int-trade/eu/
to agree export health certification in accordance with guidelines set by international agricultural bodies that are achievable by UK exporters. Due to the complexity of drafting and agreeing certification, the process can take some time. It is the importing non-EU country that sets the actual conditions for imports into their country, not Defra. There are always countries who impose import requirements which the UK cannot meet, which are out of line with international guidelines and can be very difficult (sometimes impossible) to change.

Plant Exports to Non EU countries

Most plants can be freely transported within the EU, although plants which are seriously susceptible to 'quarantine' pests or diseases may require a 'plant passport'. Countries outside the EU may require plant health certification (a phytosanitary certificate). When exporting fruit and vegetables, one may have to comply with local regulations – for example, on:

- packaging
- phytosanitary health

Other Authorities

1) International Agriculture and Technology centre

IATC is responsible for Promoting & Developing UK Agri-business worldwide. The International Agriculture & Technology Centre is the government sponsored organization providing support and advice to British companies in the agri-technology sector looking for new market opportunities across the globe.

2) Food from Britain (FFB) is the market development consultancy for British food and drink and is funded by government and industry.

35 \[http://www.defra.gov.uk/animalh/int-trde/noneu/index.htm\]
36 \[www.fera.defra.gov.uk/plants/plantHealth/plantPassporting.cfm\]
It has two objectives:

- To maximize exports of food and drink produced or processed in the UK,
- To increase production and consumption of quality regional food and drink\textsuperscript{37}.

\textbf{AUSTRALIA}

\textbf{Export Authority and Procedure}

Export Control Act 1982 and Australian Quarantine and Inspection Service (AQIS) control export and give assistance regarding exporting goods from Australia.

AQIS facilitates the export of Australian agriculture and food products by providing information, inspection and certification to meet overseas country requirements.

AQIS regulates food exports including fish, dairy produce, eggs, meat, dried fruits, fresh fruit and vegetables and some processed fruit and vegetables.

Export facilitation officers and export food inspectors also advise exporters about Australia's export regulations and importing country requirements.

AQIS maintains close contact with industry clients through industry consultative committees (ICCs), ensuring efficient and effective service delivery. ICCs are instrumental in developing effective operational responses to government policy for AQIS import and export programs\textsuperscript{38}.

‘Getting your product overseas' is designed to help potential exporters of Australian agricultural and fisheries products meet Australian and importing country requirements.

\textsuperscript{37} Food from Britain Annual Report and Accounts, 6 (2006-07).
\textsuperscript{38} www.daff.gov.au
Export commodities and AQIS

Under the Export Control Act 1982, there are 'prescribed' and 'non-prescribed' goods. Depending on what to export, the requirements must meet will vary. Examples of prescribed goods are:

- dairy
- live animals
- fish
- plants and plant products
- eggs
- meat and meat products
- grain
- animal food (frozen raw meat)
- organic produce
- fresh fruit and vegetables
- dried fruit
- pharmaceuticals (raw animal material)

Non-prescribed goods are all other goods, and provisions may apply depending on the requirements of the importing country.

Registering the premises

Some prescribed goods intended for export must be prepared at registered premises. This means that the premises must be constructed, equipped and operate in an effective and hygienic manner, and be approved by the Australian Quarantine and Inspection Service (AQIS).

To register the premises, the exporter has to first submit an application form to AQIS. Once the form is received, an AQIS officer will inspect the premises. The exporter can begin export operations when they receive notification of approval by AQIS and (where required) overseas government authorities. The exporter will be

given a registration certificate and number, which must be displayed at the exporter premises.

A review of registration occurs regularly\(^40\).

**Fees**

The Government requires AQIS to recover costs of its inspection and certification services. Fees include:

- Establishment registration charge
- Quantity charge
- Fee for service
- Documentation charge

**Inspection**

As part of ensuring the quality of export product, most prescribed goods must undergo some form of inspection to verify that they are safe and accurately described, and to ensure that foreign government requirements and our international obligations are met. The type of inspection depends on the commodity and export destination requirements.

AQIS has moved away from final product inspection to Quality Assurance (QA) based systems. Exporters now have greater responsibility for their product’s quality and compliance with overseas government requirements.

Alternative inspection arrangements include:

- Certification Assurance
- Food Processing Accreditation
- Approved Quality Assurance
- Meat Safety Quality Assurance\(^41\)

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\(^41\) Ibid.
Documentation

Prescribed goods require an export clearance number (ECN) for clearance through the Australian Customs Service EXIT system. They may also require certification to enable entry into the importing country.

For meat, hides and skins, fish, dairy, horticulture and grains, documentation may be lodged electronically with AQIS via the EXDOC system. The exporter must register with the EXDOC system before export documentation can be issued in their name. Commodity-specific requirements are contained in the various commodity Orders, instructions and guidelines that cover the construction and operational standards for export establishments.42

Other Legislations

Export Control (Orders) Regulations 1982

- Export Control (Animals) Order 2004
- Export Control (Eggs and Egg Products) Orders 2005
- Export Control (Fees) Orders 2001
- Export Control (Fish and Fish Products) Orders 2005
- Game, Poultry and Rabbit Meat Orders
- Export Control (Hay and Straw) Orders 2005
- Export Control (Meat and Meat Products) Orders 2005
- Export Control (Milk and Milk Products) Orders 2005
- Export Control (Organic Produce Certification) Orders
- Export Control (Plants and Plant Products) Orders 2005
- Export Control (Prescribed Goods - General) Order 200543

42 Ibid.
Other Authorities

Quarantine and Exports Advisory Council (QEAC) is a non-statutory body. The Council provides advice to the Minister and the Director of Quarantine on major quarantine and export certification policy issues and strategic directions for AQIS, and ensures effective consultation between AQIS, industry and stakeholders.

The Council ensures effective consultation between AQIS, industry and stakeholders, provides advice on the effectiveness of AQIS's program delivery, and helps AQIS evaluate its performance44.

USA

Export Authority and Procedure

Exporting Food Products from the United States

Firms exporting products from the United States are often asked by foreign customers or foreign governments to supply an "export certificate" for products regulated by the Food and Drug Administration (FDA)

- FDA does not require that you obtain an export certificate,
- FDA is not required by law to issue export certificates (although the agency intends to continue to provide this service as resources permit), and
- FDA does not issue certificates for food manufactured outside the U.S.

If you export food, it is your responsibility to:

- follow U.S. laws and regulations, and
- follow the requirements of the countries to which you export45.

44 www.qeac.gov.au
45 http://www.fda.gov/Food/InternationalActivities/Exports/default.htm
FDA export certificates (Certificate of Free Sale)

Certificate of Free Sale are certificates (not pertaining to a particular production lot or export consignment) that indicate that the particular product(s) is marketed in the United States or eligible for export, and that the particular manufacturer has no unresolved enforcement actions pending before or taken by FDA. These certificates may be issued by FDA-CFSAN or by a State governmental authority.

Requesting an Export Certificate

In general, each request should be accompanied by:

- original label(s) electronic file, or for new products where labels have yet to be printed, send detailed draft version(s)
- additional information, if needed, to identify the product(s),
- adequate identification of the manufacturer of each product,
- submission of a Product List (supplied by the requester) to accompany each certificate (required only by the Office of Cosmetics and Colors)
- information on where the certificate should be sent, and the following statement:

"The requester hereby presents and acknowledges that the company is aware that in making this request the company is subject to the terms and provisions of Title 18, Section 1001, United States Code which makes it a criminal offense to falsify, conceal, or cover up a material fact; make any material false, fictitious, or fraudulent statement or representation; or make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry."

To receive a Food Certificate

- Certificates for food, feed, dietary supplements, cosmetics, and food additives may take up to 3-8 weeks, depending on work load and regulatory status of the products and/or the company. Processing of a certificate cannot begin until all requested documents have been received.
- Certificates for seafood are usually expedited more quickly than processed foods and may be issued within a few days\textsuperscript{46}.

\textbf{USDA Food Export Certificate Database}

The United States Department of Agriculture (USDA) provides information on state issued export certificates and a directory of state authorities. USDA’s Foreign Agricultural Service provides the Food and Agricultural Import Regulations and Standards (FAIRS) reports on foreign countries' export certificate requirements.

\textbf{Export.gov Helps American Companies Succeed Globally}

Export.gov brings together resources from across the U.S. Government to assist American businesses in planning their international sales strategies and succeed in today’s global marketplace.

From market research and trade leads from the U.S. Department of Commerce’s Commercial Service to export finance information from Export-Import Bank and the Small Business Administration to agricultural export assistance from USDA, Export.gov helps American exporters navigate the international sales process and avoid pitfalls such as non-payment and intellectual property misappropriation.

Export.gov was created to provide better customer service for businesses interacting with the Federal Government. The U.S. Department of Commerce’s International Trade Administration manages Export.gov as a collaborative effort with the 19 Federal Agencies that offer export assistance programs and services\textsuperscript{47}.

\textbf{Export of FDA Regulated Products from U.S. Foreign Trade Zones}

From time to time industry inquires whether regulated products can be manufactured in a Foreign Trade Zone (Free Trade Zone) and exported without meeting the requirements of the laws and regulations administered by the Food and Drug Administration.

\begin{footnotes}
\item[46] \textit{Ibid.}
\item[47] \url{http://export.gov/about/index.asp}
\end{footnotes}
Foreign Trade Zones are provided in the United States by the U. S. Customs Service for the trade to hold or otherwise manipulate goods for an unlimited period of time awaiting a favorable market in the U. S. or nearby countries without being subject to customs entry, payment of duty, tax, or bond. The location of an establishment in a Foreign Trade Zone has absolutely no bearing on the jurisdiction of the Food and Drug Administration or the applicability of the laws it administers.\textsuperscript{48}

Other Regulating Agencies

Agencies of the Department of Agriculture (USDA) with responsibilities for food safety and quality and for other food-related issues are currently authorized, in some circumstances, to issue of export certificates for designated agricultural products, including foods. The Food Safety and Inspection Service (FSIS) has authority to issue export certificates for foods under its authority, i.e. meat, poultry, processed egg products when a foreign governments requirements are different than those covered by U.S. regulations. The Animal and Plant Health Inspection Service (APHIS) issue food-related export certificates pertaining to plant and animal health issues. The Agricultural Marketing Service (AMS) has authority to issue food export certificates for issues relevant to product quality and to certain food safety attributes. The Grain Inspection, Packers and Stockyard Administration (GIPSA) issue export certificates for various aspects of grain safety and quality.

Malaysia

Export Authority and Procedure

Ministry of Health controls the food exports from the country with the major role of fulfilling importing country’s requirements. Ministry of Health provides the

\textsuperscript{48} \url{http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm0733831.htm}
Export certificate like HACCP, Health Certificate, Registration of EU number, Free sales certificate, Non Genetically modified food certificate.

The Objective of Ministry of health is to protect the public against health hazard and fraud in the preparation, sale and use of food. The mission of MOH is to ensure food safety and uphold the nation's integrity in food quality control through shared responsibility and accountability on the basis of effective multipartite management system.

The Ministry of Health (MOH) has established the National Food Safety and Nutrition Council in December 2001, a multi-sectoral forum to set clear policies and strategies for the continuous improvement of the food safety programme.

The Department of Veterinary Division (DVS) facilitates export of animal products in accordance to requirements of importing countries.

**Malaysian Health Certificate scheme for HACCP**

The Malaysian Certification Scheme for Hazard Analysis and Critical Control Point system (MCS HACCP) describes procedures which apply to food premises in gaining HACCP certification. The scheme is administered by the Ministry of Health (MOH), which requires the food premises to set up and implement a HACCP system that meets the MCS HACCP criteria, followed by the application and granting of the certification. The certification process includes adequacy, compliance and any follow-up audits by appointed certified auditors. The MOH will verify the maintenance of the certified HACCP system through surveillance audit.

The certification is granted for specific food product and is not a blanket certification for all types of food product from a food premises. The scheme is

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51 Ibid.
Steps on Exporting

STEP 1
The exporter checks the Malaysian rules and regulations to determine whether his goods can be exported and whether an export licence is necessary from the government.

STEP 2
The exporter identifies the export market and conducts research for his goods including the country's import system and relevant tariff level. (In most cases, the importer has to obtain at his own risk and expense any import or other official authorisation and carry out all customs formalities in his country. However, in certain cases, based on the agreement with the importer, the exporter has to carry out all these necessary procedures which include obtaining the import licence).

STEP 3
The exporter tries to find buyers in the target country through various sources and chooses a potential buyer.

STEP 4
The exporter sends the business offer to the potential overseas buyer while investigating the buyer's credit rating through a bank or any other third party.

STEP 5
Of the buyer agrees with the exporter's offer price, including the terms and conditions, and if the credit rating on the buyer is found acceptable, the exporter concluded the sales contract with the importer.

52 Food Quality Control Division, Department of Public Health, Ministry of Health Malaysia, “Guidelines for HACCP Certification”, 1 (MOH/K/MAK/12.01(GU).
53 http://www.acccis.org.my/tips.htm
STEP 6
The exporter receives a Letter of Credit from the importer if the agreement between the seller and buyer stipulates that the transaction is based on the Letter of Credit.

STEP 7
If the exporter requires financing for the exportation of goods, he applies for export financing from a commercial bank. At the same time he also applies for an export licence at the relevant government organisations, if the export of the products is subject to export licensing.

STEP 8
The exporter prepares the goods for shipment in the manner agreed with importer. This includes the inspection of the goods by an approved agency designated by the importer. The exporter also obtains necessary documents pertaining to the goods such as a certificate of origin and a quarantine certificate from the relevant authority if it is so required by the agreement and/or the Letter of Credit.

STEP 9
The exporter books shipment space, and arranges for marine insurance. Usually, the exporter will entrust these arrangements to the freight forwarder/custom agent. The exporter (shipper) arranges the goods for shipment to be brought into the bonded area (such as Container Freight Station or Container Yard). There, the shipment undergoes pre-shipment inspection (if required by the importer), measuring, weighing and customs clearance. The goods are then loaded on board the ship. These tasks are undertaken by the customs agent/freight forwarder on behalf of the exporter.

STEP 10
The exporter arranges export credit insurance should he wish to protect himself from commercial and political risks.
STEP 11
The exporter forwards an exchange contract with the bank, if necessary to avoid the risk of foreign exchange fluctuation.

STEP 12
When the goods are loaded on board the ship, the shipping company issues the Bill of Lading (B/L) which functions as a title deed (certificate of title) of the shipped goods. The exporter receives it from the freight forwarder/customs agent. The exporter informs the importer of the quantity and details of the goods shipped, name of the carrier, departure date, etc. by sending the shipping advice. The exporter prepares the Bill of Exchange (Draft), applies for negotiation of the Documentary Bill at the negotiating bank, submits the B/L together with other shipping documents and collects payment in exchange. At this state, the exporter will have completed all the necessary export procedures.

STEP 13
The Letter of Credit (L/C) opening bank (reimbursing bank) receives the documents from the negotiating bank.

STEP 14
The bank notifies the importer of the arrival of the documents.

STEP 15
The importer effects payment at the bank and receives the documents in return.

STEP 16
The importer requests the customs agent to receive the shipment from the shipping company and to clear all customs procedures in the importer's name and arrange transportation of the goods to the importer's warehouse.\(^{54}\)

\(^{54}\) Ibid.
JAPAN

Export Authority and Procedure

Food and agriculture exports from Japan are regulated under Ministry of Health, Labour and Welfare. The exporter must be registered under the Ministry and are subject to continuous inspections. In some case Japan Certifies the processing establishments for exports.

One of the mandates of MHLW is to inspect the facilities based on HACCP principles and giving approvals to the type of food and food facilities.

Safety assurance of exported foods

(1) Meat intended for the U.S.

When meat is exported to the U.S., the processing establishments must meet the U.S. hygiene standards. The establishments are certified by the Ministry of Health, Labour and Welfare, based on documents and on-site inspections. If they meet the established standards, they are certified as "foreign meat establishments" specified by the USDA (the United States Department of Agriculture). Products are inspected by inspectors appointed by the MHLW (hereinafter referred to as appointed inspectors). A signer for a "health certificate for meat exported to the U.S." is appointed from among the appointed inspectors. When the products pass the meat inspection, the health certificate for meat exported to the U.S. is issued at the time of export.

The certified establishments must manage hygienic conditions, based on the hygiene management standards and HACCP system. Appointed inspectors verify whether the hygiene management standards and HACCP standards are met. The target products are monitored monthly by designated inspectors for pesticide residues and veterinary drug residues, and the establishments are inspected by employees of the Regional Bureau of Health and Welfare. Microorganism tests
are also conducted. Tests are conducted regularly for coliform and salmonella\textsuperscript{55}.

2) Seafood intended for the U.S.

When fish or fishery products are exported to the U.S., these products must be manufactured or processed, based on the federal regulations requiring that the HACCP specified by the U.S. Food and Drug Administration should be met. Japan certifies processing establishments as "certified seafood processors exporting to the U.S.," when it confirms that they comply with the requirements specified in the federal regulations. The certification procedures are based on the "Directives for handling seafood exported to the U.S."\textsuperscript{56}.

(3) Seafood intended for the EU countries

When fish or fishery products are exported to the EU countries, the processing establishments of these products must meet hygiene requirements that are established by the EU. The hygiene requirements should be based on the HACCP system. The hygiene requirements and related formalities are established, based on two directives that were established after discussion between Japan and the EU Committee. These directives are the "Directive for Health Conditions and the Issuance of Health Certificates of Fishery Products Exported to EU" and the "Directive for Health Conditions concerning Handling of Scallops and Other Bivalves for Exports to the EU." These requirements include not only hygiene requirements to be observed by the corresponding businesses, but the manner of issuing health certificates. Those who wish to export fish or fishery products to the EU must obtain certification by the MHLW, through examinations conducted by both the MHLW and the local government, based on the abovementioned established requirements. These establishments are certified as "establishments approved for the export of frozen or processed fish and fishery products to the European Union." The approved establishments are regularly inspected by food sanitation inspectors appointed by the MHLW. A health certificate is issued to the

\textsuperscript{55} The Nineteenth seminar for Visiting Food Hygiene Experts, 2006 of Department of Food Safety Pharmaceutical and Food Safety Bureau, Ministry of Health, Labour and Welfare.

\textsuperscript{56} Ibid.
corresponding establishments at the time of export\textsuperscript{57}.

(4) Seafood intended for China

When fish or fishery products are exported to China, a health certificate issued by the Government of Japan is necessary. If target products are proven to meet sanitary requirements specified by the Chinese Government, based on document examinations and on-site examination conducted by the food sanitation inspectors enrolled in the MHLW (Regional Bureau of Health and Welfare), a health certificate is issued for each cargo\textsuperscript{58}.

THAILAND

Export Authority and Procedure

Thai FDA controls the export of various food and agricultural product together with other agencies.

In Thailand, the Food Act of B.E.2522 (1979) is the major law aimed at protecting and preventing consumers from health hazards occurring from food consumption. According to the Food Act, the Ministry of Public Health is designated to be in charge of the execution of this act. The act also empowered the Ministry of Public Health to promulgate ministerial regulations, to appoint the Food Committee and competent officers, and to set up other activities in order to carry out the provisions of the Act\textsuperscript{59}.

The ministerial regulations describe the procedures for applications for manufacturing licenses, importation licenses, and registration including the rates of fees, the identification card of the competent officers and the labeling of food products for exports\textsuperscript{60}.

\textsuperscript{57} Ibid.
\textsuperscript{58} Ibid.
\textsuperscript{59} Food Act B.E.2522 (1979).
\textsuperscript{60} www.fda.moph.go.th/eng/food/laws.htm
Export inspection and certification is conducted by the Department of Fisheries (DOF), the Department of Livestock Development (DLD) and the Department of Agriculture (DOA). Additionally, Laboratory Center for Food and Agricultural Products Co., Ltd: LCFA is dedicated to examining food and agricultural products, especially for private sector to support an efficient export system.\(^6\)

The Codex Committee on Food Import and Export Inspection and Certification Systems has provided Principles for Food Import and Export Inspection and Certification which Thailand has applied for use in the inspection and certification guideline for import/export food and agricultural products.\(^62\)

**Food Export Control**

Certification for exported food and agricultural product throughout the entire food agricultural has been implemented. These programs are described and follow:

**Farm production:** This is an essential stage for food safety control. Farm registration and certification have also been used as means to achieve safety control at the primary level of production. Such programs include the certification of Good Agricultural Practice (GAP), Code of Conduct (CoC) and certification for animal feeds.

**Primary food processing:** The control of exported food productions at this level focuses on quality control of pre-preparation of agricultural produce at the peeling shed or packing house etc. Certification programs on Good Hygienic Practice that is in line with Codex guideline have also been used to ensure product quality and safety.

**Secondary food processing:** The certification focuses on product quality and safety in accordance with the importing country's requirements. The inspection of


\(^62\) Ibid.
the certification based on Codex standard includes; Good Manufacturing Practice (GMP); Hazard Analysis and Critical Control point (HACCP)

**Other Authorities**

Thai government has designated that the National Bureau of Agricultural Commodity and Food Standards (ACFS), Ministry of Agriculture and Cooperatives (MOAC) as the center for collecting, compiling, and distributing information related to inspection of food and agricultural products. ACFS also keeps the information and operates as a collaborative center between authorized certification authorities such as the Department of Livestock Development (DLD), the Department of Fisheries (DOF), the Department of Agriculture (DOA) Thai Customs and the EU inspection unit. As such, ACFS have increased the effectiveness of food and agricultural products certification system. The database network also provides a trace-back system for investigation of product certification record.

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64 *Ibid.*