

APPENDIX 16

GUIDELINES FOR SETTLEMENT OF TRADE DISPUTES AND COMPLAINTS

Exporters should project a good image of the Country abroad to promote exports. With this objective in mind, an enduring relationship with foreign buyers is of the utmost importance, and trade disputes, whenever they arise, should be settled as soon as possible. The majority of complaints from foreign buyers are with regard to quality. Other complaints are usually for unethical commercial dealings on the part of Indian exporters and can be categorised as non-supply of goods after confirmation of the orders, non-payment of agreed commission, non-adherence to the delivery schedule etc. The work relating to dealing such complaints of foreign buyers has been centralised with the 'Nodal Officer' and its assisting Cell viz., the Trade Disputes Cell in the office of the Director General of Foreign Trades, Ministry of Commerce, Udyog Bhawan, New Delhi.

ACTION AGAINST ERRING EXPORTERS

A. Enforcement action in the office of Director General of Foreign Trade against erring exporters can be taken under the existing Rules & Regulations depending on the offence as follows:-

Non-payment of commission, supply of sub-standard goods, non-adherence of delivery schedules, indulgence in unethical commercial dealings, amount to breach of contract for which action can be taken under clause 7 of the Export (Control) Order, by which the Central Government or Director General of Foreign Trade or an authorised officer may debar an exporter from exporting any goods if he commits a willful breach of contract. This applies to the cases pertaining to a period prior to 19-6-1992. However, cases pertaining to a period on or after, 19.6.1992 enforcement action is taken in terms to Foreign Trade (Development & Regulation) Act, 1992 and Rules framed thereunder namely:

- (i) Section 8 empowers the Director General of Foreign Trade to suspend or cancel the Importer/Exporter Code Number which is a prerequisite for any export or import, where the Director General of Foreign Trade has inter-alia reason to believe (a) that the exporter has committed an economic offence as specified by the Government or (b) that any person has made an export/import in a manner gravely prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of the country.
- (ii) Section 9(4) empowers the Director General of Foreign Trade or the officer authorised by him to grant Authorisation, to suspend or cancel any Authorisation granted under the Act. Rule 10 of the Foreign Trade (Regulation) Rules, 1993 lays down the conditions for such cancellation under Section 9(4) of the said Act. This includes cases where the Authorisation has been obtained by fraud, suppression of facts or misrepresentation and where the licensee has contravened any law relating to Custom or Foreign Exchange or the Rules & Regulations relating thereto.
- (iii) Section 11(2) of the Act provides for imposition of fiscal penalty in cases where a person makes or abets or attempts to make any import or export in contravention of any provisions of the Act, any Rules or Orders made thereunder or the Export-Import Policy. Rule 11 of the Foreign Trade (Regulation) Rules 1993 requires an exporter to state in the shipping bills or any other documents prescribed under the Customs Act, 1962, the value, quality and description of export goods to the best of his knowledge and belief and to certify that the quality and specification of the goods are in accordance with the terms of the export contract and has also to subscribe a declaration at the foot of such a document that the statements made by him are true.
- (iv) **Paragraph 3.9 of the Foreign Trade Policy 2009-14** empowers the Director General of Foreign Trade to take action against an exporter, if it comes to his notice or he has reason to believe, has made an export in a manner gravely prejudicial to (1) trade relations of India with any foreign country; (2) to the interests of other persons engaged in exports or imports and (3) has brought disrepute to the credit or the goods of the country.

- (V) The Director General of Foreign Trade has powers **under para 2.69 of chapter 2 of the Hand Book of Procedures 2009-14** formulated in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, to direct any Registering Authority to register or deregister an exporter or otherwise issue such directions to them consistent with and in order to implement the provisions of the Act, the Rules & Orders made thereunder, the Policy or the Hand Book. Besides, the Registering Authorities viz. Export Promotion Councils, Commodity Boards etc. may also take appropriate necessary action and view on the application furnished by the exporters for registration if, prima-facie, there are reasons to believe that he has indulged in any form of unfair, corrupt or fraudulent practice.

Adequate Opportunity is to be provided to the exporter to explain his stand before resorting to penal action by way of issuance of Show Cause Notice, personal hearing etc., as per rules.

- B. Certain export products have been notified for Compulsory Quality Control & Pre-shipment Inspection prior to their export. Penal action can be taken under the Export (Quality Control & Inspection) Act, 1963 as amended in 1984, against exporters who do not conform to the standards and or provisions of Act as laid down for such products.

COMPLAINTS

Besides Foreign Trade (Development & Regulation) Act and Export (Quality Control & Inspection) Act and Export (Quality Control & Inspection) Act, there are other laws such as Indian Coffee Act, Tea Act, Coir Industry Act, Dangerous Drugs Act, Customs Act, etc. to ensure that only Quality products are exported. In spite of these provisions, there are complaints from foreign buyers. It has, therefore, been decided by the Ministry of Commerce that in order to develop our export on a sustained and enduring basis and at the same time improve the image of our exports in international market, it is essential that such complaints are checked, sorted out and resolved quickly and amicably before taking recourse to penal action. At the same time ways and means should be found to reduce complaints/disputes to the minimum.

ORGANISATIONS RECEIVING COMPLAINTS

Information regarding trade complaints and disputes are being received by various organizations/ departments, such as:

- ◆ Indian Missions abroad;
- ◆ Government of India, Ministry of Commerce;
- ◆ Export Promotion Councils, Chamber of Commerce & Industry including FIEO;
- ◆ Commodity Boards;
- ◆ Indian Trade Promotion Organisation;
- ◆ Export Inspection Council and Export Inspection Agencies;
- ◆ Directorate General of Commercial Intelligence and Statistics;
- ◆ Reserve Bank of India and in respect of food items exported to USA, detentions published by USFDA and sent to the Government of India.

FORMAT FOR LODGING COMPLAINTS

To initiate prompt and effective steps for redressing the grievance of overseas complainants and to avoid unnecessary correspondence, detailed information regarding the complaint should be furnished by the complainants in the first instance itself. This will not only help the investigation but will also minimise the time in examination of the complaint and in turn its settlement. It has, therefore, been decided that complaints as far as possible, should be made in the prescribed proforma as per Annexure I & II, as the case may be, duly supported by photo copies or relevant documents preferably in duplicate.

MACHINERY FOR SETTLEMENT

The Export Commissioner/Joint Director General of Foreign Trade in the office of Director General of Foreign Trade, Udyog Bhavan, Maulana Azad Road, New Delhi-110 011 has been designated as the 'Nodal Officer' for the purpose of dealing with trade disputes and complaints. It is imperative, therefore, that all information concerning a particular trade dispute or complaint is received by the 'Nodal Officer' so as to arrange for its just and amicable settlement within a specified period.

Different Authorities including Missions are dealing with or referring the trade disputes and complaints to different agencies in Government of India. No uniform procedure is being followed which makes their monitoring difficult. It has now been decided by the Ministry of Commerce that all trade disputes and complaints including those registered with the Missions should be sent to the 'Nodal Officer' in the office of Director General of Foreign Trade, Udyog Bhavan, New Delhi who would take follow up action on these references. Details of such trade disputes and complaints sent to the 'Nodal Officer' however may continue to be incorporated in the reports being sent to the respective Territorial Divisions in the Ministry of Commerce. In many cases, such issues are referred to different agencies/Ministries in the Government of India without keeping the concerned Territorial Division in the Ministry of Commerce informed of the same and this affects the coordinating work of the Territorial Division in the Ministry of Commerce, who are expected to function as the nodal point for all matters relating to international trade relations with respect to their territory.

MECHANISM FOR RESOLVING DISPUTES

Complaints received by the 'Nodal Officer' in the office of Director General of Foreign Trade, Ministry of Commerce, Udyog Bhavan, New Delhi would be initially scrutinised and examined in the Trade Disputes Cell of this office specially created for the purpose and to assist the 'Nodal Officer' to discharge this function. Complaints would be broadly categorised into the following three categories:-

- (i) Quality complaints;
- (ii) Complaints other than quality complaints against registered exporters; and
- (iii) Complaints other than those at (i) & (ii) above.

For complaints involving quality as well as other commercial considerations i.e. mixed complaints, the factor chiefly responsible for the complaint would form the basis for determining the authority to whom the complaint is to be referred for investigation and disposal.

QUALITY COMPLAINTS

- I. A."Standing Committee" under the chairmanship of the Additional Secretary/Chief Controller of Imports and Exports, Ministry of Commerce (Now Director General of Foreign Trade) was set up by the Ministry of Commerce in July, 1978 to examine complaints regarding the export of sub-standard goods and determine ways and means to eliminate them. The Export Inspections Agency-Bombay (which is under the administrative and technical control of Export Inspection Council of India, Ministry of Commerce) was made central point to collect quality complaints from all sources and forward them to the respective agencies for investigation and further action. In May, 1981, 'Regional Committees' at Mumbai, Calcutta, Kochi, Delhi and Chennai were setup. Five more regional Committees have also now been set up to augment and to investigate quality complaints at Ahmedabad, Bangalore, Kanpur, Ludhiana and Hyderabad and who will examine quality complaints pertaining to their region and initiate prompt and effective steps to redress the grievances of the overseas buyers. These Committees will also be responsible to suggest steps for arresting recurrence of such complaints and to decide effective and appropriate penal action against the erring exporters and those found guilty and/or primarily responsible for attracting the complaints. The 'Regional Committees' are composed of:

1. Joint Director General of Foreign Trade -Chairman

2. Bureau of Indian Standard-Member
3. Office of Agricultural Marketing Advisor-Member
4. Small Industries Service Institute-Member
5. Reserve Bank of India-Member
6. Officer-in-charge of Export Promotion attached to the office of Jt.DGFT-Member
7. Export Promotion Council/Commodity Board/Trade Association-Invitees
8. Export Inspection Agency-Member-Secretary.

The 'Regional Committees' will examine, consider and decide quality complaints in accordance with the guidelines for the purpose,

- II. The 'Nodal Officer' or the Trade Disputes Cell in the office of Director General of Foreign Trade New Delhi will forward one copy of the complaint received to the 'Regional Committee' on Quality Complaints for speedy investigation, settlement and report and endorse a copy of this letter to the concerned Territorial Division in the Ministry of Commerce.
- III. The 'Regional Committees' will investigate and make all possible efforts to settle the dispute amicable within three months from the date of receipt of complaint. Where required, the 'Regional Committee' may take the assistance of the Export Promotion Councils/Commodity Boards for settlement of the trade disputes.
- IV. If the disputes are settled to the satisfaction of foreign buyers through conciliations and/or if the 'Regional Committee' after considering the facts of the case, decides that there is no fault on the part of the Indian Exporter/Manufacturer and/or that the complaint is not genuine, the case will be treated as closed. A report will be sent to the 'Nodal Officer' or the Trade disputes Cell, office of Director General of Foreign Trade with a copy to the Concerned Territorial Division in Ministry of Commerce.
- V. In cases where the 'Regional Committee' fails, to settle a dispute amicable and conciliation does not take place and the matter does not go for arbitration etc. in terms of contract and the 'Regional Committee' find that the fault lies with the Indian Exporters or that they are not cooperating, such cases will be transferred to the 'Nodal Officer' or the Trade Disputes Cell with a copy to the Territorial Division in Ministry of Commerce along with their recommendation/report for further necessary action as per policy including in appropriate cases, legal action. Deliberate malpractices on the part of the exporter shall be dealt with under the penal and adjudication provisions of the Export (Quality Control & Inspection) Act, 1963 as amended in 1984, erstwhile Import and Export (Control) Act, Export (Control) Act, 1992 and such other laws as may be found appropriate.
- VI. The 'Nodal Officer' will consider such cases reported by the 'Regional Committees' and after examination, initiate appropriate penal action to de-register/debar the exporter and/or take such action as per law as considered necessary, including, in appropriate cases, legal action depending upon the gravity of the offence.
- VII. These Committees will submit monthly reports to the 'Nodal Officer' who will monitor the progress of action taken for settlement of complaints and disputes.
- VIII. As mere settlement of the complaints and dispute would not be enough, the quality complaints and disputes would also be examined by the Export Inspection Agency (Which is under the administrative and technical control of the Export Inspection Council of India, Ministry of Commerce) as a Member-Secretary of the 'Regional Committee' from technical point of view, to assess whether there had been any technical failure for which a complaint had been received. Such technical failure may be with regard to technical deficiency of not meeting the standard, manufacturing/design defects, etc. To eliminate such failures and avoid such complaints in future proper technical advice may be extended by the Export Inspection Agency to the manufacturers. This authority will also examine the aspect whether the incidence of complaints have increased by way of circumvention of the law and/or change of procedures and suggest remedial measures. This would enable stricter enforcement of the statutes to upgrade the quality and thereby image of country's export. A report in this regard would be sent to the 'Nodal Officer' in the office of the Director General of Foreign Trade and also to the concerned Division of Ministry of Commerce.

- IX. The 'Regional Committee' will also send a consolidated quarterly report in respect of all cases referred to it with details of action taken to the Trade Disputes Cell in the office of Director General of Foreign Trade.

COMPLAINTS OTHER THAN QUALITY COMPLAINTS AGAINST REGISTERED EXPORTERS

- (i) The 'Nodal Officer' will arrange to forward one copy of the complaint received from the Trade Disputes Cell in the office of Director General of Foreign Trade in the prescribed format or otherwise to the respective Registering Authority viz. Export Promotion Council/Commodity Board etc. as the case may be for investigation, settlement and report endorsing a copy of the letter to the concerned Territorial Division in the Ministry of Commerce for information.
- (ii) The Export Promotion Council/Commodity Board (Registering Authority) would arrange to get these considered and examined through a 'complaint Panel/Committee' specially constituted for this purpose.
- (iii) The 'Complaint Panel/Committee' would investigate and make efforts to settle the complaint amicable within three months from the date of receipt of the complaint from the office of the 'Nodal Officer' viz. Trade Disputes Cell.
- (iv) The Council/Board will submit monthly reports to the 'Nodal Officer' who will monitor the progress of action taken for settlement of the dispute.
- (v) If the disputes are settled to the satisfaction of the foreign buyer through conciliation, and/or of the Complaint Panel/Committee, after considering the facts of the case, decide that the Indian Exporter/Manufacturer is not to be blamed and/or that the complaint is not genuine, the case will be closed and a report sent to the 'Nodal Officer' with a copy to the concerned Territorial Division in the Ministry of Commerce.
- (vi) In cases when the 'Complaint Panel/Committee' fails to resolve a dispute amicably and conciliation does not take place and the Panel/committee feels that the fault lies with the Indian Exporter who is not cooperating, on its recommendation, Councils/Commodity Boards will take action to de-register such exporter after issue of show cause notice and a hearing. The 'Nodal Officer' will be informed of the action taken and also of further action if warranted in the case.
- (vii) If the dispute is covered by an arbitration clause in the export contract or where the firms concerned agree to arbitration and a large financial stake is involved, the same will be transferred to the "Indian Council of Arbitration" for consideration who will send a report to the 'Nodal Officer' with a copy to the Territorial Division in the Ministry of Commerce.
- (viii) In cases where there is no arbitration clause or firms do not want arbitration and the sum involved is not significant and even on the recommendation of the Complaint Panel/Committee of/export promotion council/Commodity board, it has not been possible to resolve the matter or to take any action against the erring exporter, such cases will be reported to the 'Nodal Officer' for taking further necessary action as recommended by the "Complaint Panel/Committee etc.
- (ix) The 'Nodal Officer' will consider such cases reported by the 'Complaint Panel/Committees' and after due examination and investigation and after exhausting reconciliation efforts take action to de-register/debar the defaulting exporters by issue of show cause notice/hearing etc. and/or take such action as necessary, as per rules & regulation in force including in appropriate cases legal action, depending upon the gravity of offence.
- (x) The Export Promotion Council /Commodity Boards will send a consolidated quarterly report in respect of all cases referred to them with details of action taken to the Trade Disputes Cell in the office of Director General of Foreign Trade.

OTHER COMPLAINTS

- (i) The 'Nodal Officer' will have these cases examined and dealt with in the trade disputes cell in the office of Director General of Foreign Trade. Initially efforts will be made to arrange for settlement of the complaint amicably, failing which action will be taken against the erring firms in terms of the Foreign Trade (Development & Regulation) Act. In cases where it is felt that action has to be taken by any other authority in Government of India, such cases will be referred to respective competent authority for suitable action as per the gravity of the offences.
- (ii) The 'Nodal Officer' will send a report of action taken in such cases against the exporters to the concerned Territorial Division in the Ministry of Commerce. Efforts will be made to concretise action in such cases within three months of the receipt of the complaint.
- (iii) These complaints shall be analysed to ascertain their cause and evolve remedial measures by way of reference to the concerned authority to avoid recurrence of such complaints in future.

The Secretariat of the 'Nodal Officer' viz the Trade Disputes Cell in the office of the Director General of Foreign Trade shall also maintain a data base of importers lodging complaints against Indian exporters, as well as, data base of such exporters against whom complaints have been received. It shall also identify commodities for which the incidence of quality complaints are frequent and will interact with the concerned Commodity Division in the Ministry of Commerce for evolving measures to arrest their incidence.

While the respective Territorial Division in the Ministry of Commerce will be the repository of all complaints received in respect of their territory and for coordination work relating thereto as the nodal point for all matters relating to international trade of their territory, it shall be the 'Nodal Officer' in the office of Director General of Foreign Trade, Udyog Bhavan, New Delhi who would be following up on these complaints for their redressal and remedial measures.

The complaints of Indian exporters/importers against their importers/exporters abroad received in the office of the 'Nodal Officer' in the office of Director General of Foreign Trade will be referred to the concerned Missions abroad for arranging for their amicable settlement. The Missions shall keep the 'Nodal Officer' informed of the action taken on such reference with an endorsement directly to such complainants and respective EPCs/CBs for any follow-up action such as publication of the names of such defaulting Importers/Exporters in their journal by way of information/warning to all concerned Exporter and Importer firms. A data base of such cases shall also be maintained in the Trade Disputes Cell in the office of Director General of Foreign Trade, Udyog Bhavan, New Delhi.

PROFORMA FOR INVESTIGATION OF QUALITY COMPLAINTS

(To be filled in by the complainants)

1. Complaint lodged by
(Name & full Address)
2. Against whom
(Name & full Address)
3. Whether the supplier is a merchant exporter or a manufacturer exporter
4. Particulars of complaint
(Attach separate sheets if required)
5. Total quantity & value of consignment
(Please furnish copy of shipping invoices)
6. Quantity & amount of claim, if any
7. Particulars of contract/L.C. if any giving details of technical requirements stipulated (copy may be furnished)
8. Whether any sample was approved?
(Give particulars)
9. Whether any agency was nominated for inspection prior to shipment.
10. Date of arrival of goods at the destination port.
11. Condition of the goods at destination port.
12. Bill of Lading/Airways Bill No.(Copy may please be furnished)
13. Whether consignment was in sealed condition? If so, give particulars of seal used.
14. Whether exporter forwarded copy of inspection certificate(Please furnish copy)
15. A) Whether any independent survey of the goods was done(Please furnish copy of every report)
b) Whether survey was carried out with or without the consent of supplier?
16. Whether quality defects were also covered by insurance(for perishable goods)
17. Whether imports were effected from this supplier/exporter in the past?
18. Any complaints on past supplies & its mode of settlement.
19. Whether further orders have been placed with this supplier/exporter subsequently?
20. Any other information that may be of assistance in investigation of this complaint.

The foregoing information/particulars are true to the best of our knowledge and belief.

Place

Date

Signature.....

(Name in Capital Letters)

Designation

Seal with address & name of firm

PROFORMA FOR INVESTIGATION OF COMPLAINTS

(Other than Quality complaints)

FOR USE OF COMPLAINTS

1. Complaint lodged by (Name & full address)
2. Against whom (Name & Full address)
3. Whether the supplier is a merchant exporter or a manufacturer exporter?
4. Particulars of complaint (Please furnish details)
 - (a) Non-payment of Commission
 - i) Export order/LC (Copy may be furnished)
 - ii) Agency agreement (copy may be furnished)
 - iii) Export invoice (copy may be furnished)
 - iv) Amount & due date as commission
 - v) Copies of correspondence exchanged (Furnish)
 - vi) Any complaint in the past and mode of settlement
 - (b) Non-execution of export order
 - (i) Export order/LC (Copy may be furnished)
 - (ii) Whether any sample was approved (Give details)
 - (iii) Copies of correspondence exchanged.
 - (iv) Was anything pending from your end?
 - (v) Reasons for delay/non-execution, as far as known
 - (c) Short supplies
 - (i) Whether any agency was nominated for inspection prior to export? (Furnish details including inspection certificate, if any)?
 - (ii) Short landing survey certificate (copy may be furnished)
 - (iii) Whether any survey was carried out at port of destination (Please enclose copy)
 - (iv) Packing list (Please enclose copy)
 - (v) Reason for short landing as far as known.
 - (vi) Copies of correspondence exchanged.
5. Whether imports were effected from the same exporter in the past?
6. Any complaint on post suppliers and mode of settlement
7. Whether further orders have been placed with the same exporter?
8. Any other information that would help in investigation of the complaint.

The foregoing information/particulars are true to the best of our knowledge and belief.

Place
Date

Signature
Name
Designation

Seal with address & name of firm