

COVID-19: INDIA'S TRADE RELATED RESPONSES

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The nationwide lockdown imposed by Ministry of Home Affairs, Government of India for a period of 21 days from 25.03.2020 to 14.04.2020 (Phase 1) to contain COVID-19 pandemic in the country,¹ and the subsequent extension of lockdown for the entire country for another 19 days till 03.05.2020 (Phase 2),² will undoubtedly have far reaching long-term implications on India's trade and growth projections. As countries across the globe have cordoned off their borders in the wake of the pandemic, in March itself India's merchandise exports reeled from record plummet of 34.6%, imports dipped to a low 28.7% and trade deficit tapered down to \$9.8 billion.³

This article explains the key measures taken by the Directorate General of Foreign Trade ("DGFT") operating under the Ministry of Commerce and Industry, Government of India, and by the Directorate General of Shipping ("DG Shipping"), which operates under the Ministry of Shipping, Government of India.

I MEASURES IMPLEMENTED BY THE DGFT

As a means to avoid policy vacuum on the trade front, the DGFT has extended India's Foreign Trade Policy 2015-2020 and Handbook of Procedures 2015-20, which were both due to expire on 31.03.2020 upto 31.03.2021 and introduced various other amendments in effect extending exemptions by one year and granting extensions, *inter alia*, on validity period of status certificates, validity of Duty Free Import Authorisation and Export Promotion Capital Goods Authorization for import purposes, dates of filing of various applications and returns.⁴

Further, several trade regulatory measures have been introduced by Government of India, the key among them being export ban on key medical supplies, issuance of procedural clearances for exports and imports via digital platforms and directives issued by Ministry of Shipping to ensure regular supply of goods in the country. These fall into three broad categories:

- (A) Export Restrictions on Essential Medical Supplies;
- (B) Amendments to the procedures for issuance of Certificates of Origin; and
- (C) Other trade facilitative measures.

Each of these is discussed below.

A. *Ban on Export Of Essential Medical Supplies*

On 31.03.2020, the DGFT amended Schedule 2 (Export Policy) of Indian Trade Classification (Harmonised System) of Export Items, 2018 ("ITCHS Export Policy, 2018") and prohibited the export of all varieties of personal protection equipment including Clothing and Masks used to protect wearer from air borne particles and any other respiratory masks, personal protective clothing including coveralls and N-95 masks, with immediate effect.⁵ This prohibition was subsequently amended and relaxed vide later notifications for surgical and disposable masks, all gloves except NBR Gloves, all ophthalmic

¹ MHA Order No 40-3/2020-DM-I (A) dated 24.03.2020.

² MHA Order No 40-3/2020-DM-I (A) dated 14.03.2020.

³ Livemint, Covid-19 pulls down India's exports by 34.6% in March; trade deficit narrows to \$9.8 bn, dated 15.04.2020, available at: <https://www.livemint.com/news/india/india-s-trade-deficit-narrows-to-9-8-bn-in-march-exports-dip-34-6-11586955282193.html>.

⁴ DGFT Public Notice No. 57/2015-2020 dated 31.03.2020 and DGFT Public Notice No. 67/2015-2020 dated 31.03.2020.

⁵ DGFT Notification No. 44/2015-2020, dated 31.01.2018.

instruments except medical goggles, surgical blades, breathing appliances used by airmen, divers, gas masks with chemical absorbent for filtration against poisonous vapour, smoke, HDPC Tarpaulin, PVC conveyor belt, biopsy punch.⁶ As a result, all the above mentioned exempted items, except surgical/disposable masks (2/3Ply),⁷ have now been allowed to be exported freely.⁸

The Active Pharmaceutical Ingredients (“API”) and formulations made from API, including paracetamol, tinidazole, chloramphenicol and 23 other drugs and their formulations as listed in the DGFT notification No. 50/2015-2020, were restricted with immediate effect from 03.03.2020.⁹ The export of restricted products is permitted only under a licence granted by the DGFT. However, this export policy was subsequently modified and all APIs and formulations made from listed APIs, other than paracetamol APIs (which continues to remain restricted for export),¹⁰ have been made free for export.¹¹

The export ban was further amplified on 19.03.2020 to prohibit with immediate effect the export of all ventilators including any artificial respiratory apparatus or oxygen therapy apparatus or any other breathing appliance or device falling under any ITCHS Code,¹² and textile raw material for masks and coveralls falling under the respective ITCHS code specified against each.¹³

Sanitizers, one of the most high-demand products during the COVID-19 crisis, was banned for export on 24.03.2020. The DGFT prohibited the export of all sanitizers falling under any ITCHS Code with immediate effect and clarified that the transitional arrangement under paragraph 1.05 of the Foreign Trade Policy shall not be applicable.¹⁴ Thereafter, with effect from 04.04.2020, the export of diagnostic kits (diagnostic or laboratory reagents on a backing, preparation diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials falling under any ITCHS code) has been restricted.¹⁵

The export policy with respect to Hydroxychloroquine (“HCQ”) in India has been a matter of concern for nations across the world battling COVID-19 and Indian pharmaceutical industry. On 25.03.2020, the first day of the of Phase 1 of the 21 days national lockdown, the export policy of HCQ was amended and HCQ and formulations made from HCQ under any ITCHS Code was changed from free to prohibited. Under paragraph 2 of the notification three exceptions had been provided against this prohibition which included, first, exports from SEZ/EOU to fulfil export obligation under any Advance license. Second, exports where irrevocable letter of credit has been issued prior to the date of the notification or full advance payment has been received, and third, exports allowed by the Government of India to other countries on humanitarian grounds on case to case basis on the recommendation of Ministry of External Affairs.¹⁶ A subsequent notification dated 04.04.2020 deleted the exceptions granted in paragraph 2 and export of HCQ and formulations made from HCQ has again been prohibited.¹⁷

Interestingly however, an official spokesperson for the Ministry of External Affairs, while responding to the queries on export policy on HCQ and other essential drugs maintained that “*In view of the*

⁶ DGFT Notification No. 47/2015-2020, dated 08.02.2018; DGFT Notification No. 48/2015-2020, dated 25.02.2018.

⁷ DGFT Notification No. 52/2015-2020, dated 19.03.2020 revised serial number 207A of the DGFT Notification No. 48/2015-2020 to prohibit the export of surgical/disposable (2/3Ply) masks.

⁸ DGFT Notification No. 47/2015-2020, dated 08.02.2018; DGFT Notification No. 48/2015-2020, dated 25.02.2018.

⁹ DGFT Notification No. 50/2015-2020, dated 03.03.2020.

¹⁰ DGFT Notification No. 03/2015-2020, dated 17.04.2020.

¹¹ DGFT Notification No. 03/2015-2020, dated 06.04.2020.

¹² DGFT Notification No. 53/2015-2020, dated 24.03.2020.

¹³ DGFT Notification No. 52/2015-2020, dated 19.03.2020.

¹⁴ DGFT Notification No. 53/2015-2020, dated 24.03.2020.

¹⁵ DGFT Notification No. 59/2015-2020, dated 04.04.2020.

¹⁶ DGFT Notification No. 54/2015-2020, dated 25.04.2020.

¹⁷ DGFT Notification No. 01/2015-2020, dated 04.04.2020.

*humanitarian aspects of the pandemic, it has been decided that India would licence paracetamol and HCQ in appropriate quantities to all our neighbouring countries who are dependent on our capabilities. We will also be supplying these essential drugs to some nations who have been particularly badly affected by the pandemic.*¹⁸ According to recent media reports India is in the process of supplying HCQ to 55 coronavirus hit countries.¹⁹

B. Issuance of E-Certificates Of Origin

As a result of the lockdown, the issuance of physical copies of certificate of origin by authorised agencies under India's free trade agreements (FTAs), comprehensive economic cooperation agreement (CECA), comprehensive economic partnership agreement (CEPA), and preferential trade agreements (PTAs) has been temporarily halted. In order to ease the process, it was initially decided that certificate of origin would be issued retrospectively by authorised Indian agencies after the reopening of offices and India's trading partners were urged to allow the eligible imports under preferences on a retrospective basis subject to the subsequent production of certificate of origin by the Indian exporters.²⁰ Subsequently, it was notified that the Online Platform for Preferential Certificate of Origin would be expanded to include all FTAs/PTAs and would serve as a single point access for all designated certificate of origin issuing agencies and for all export products. The designated agencies will issue digitally signed electronic certificates of origin only which can be downloaded from the online platform and the e-certificate can be shared with the authorities in the FTA partner countries. Once the functioning resumes, the certificate of origin issued on the electronic platform will be made available in hard copy with ink-signature of the issuing officer to the applicant exporter besides the e-certificate. However, the certificate issuance process will continue to remain online.²¹ Importing countries have been requested to accept these digitally signed certificates or unsigned physical certificates in order to clear consignments provisionally at preferential duty subject to other conditions like bond or undertaking.²² Preferential trade agreement will be honoured by India also by provisionally clearing consignments with digitally signed certificates or unsigned physical certificates at preferential duty subject conditions required by customs in the nature of bonds or undertaking and appropriate security.²³

C. Other Measures to Facilitate Trade

The DGFT has also issued a number of trade notices in order to address the procedural difficulties and other issues faced by exporters on account of several local offices remaining shut due to the COVID-19 pandemic. These include:

- (a) A one-time condonation under the Export Promotion Capital Goods Scheme has been granted, in the public interest, extending the time of receipts of requests till 31.03.2021.²⁴
- (b) To address the hurdles in re-validation of Registration Cum Membership Certificate ("RCMC") of the Export Promotion Councils during the pandemic, the Regional Authorities will no longer insist on a valid RCMC from applicants for any incentives or authorizations till 30.09.2020 in cases where such RCMCs expire on or before 31.03.2020.²⁵

¹⁸ Ministry of External Affairs, Official Spokesperson's response to media queries on COVID19 related drugs and pharmaceuticals, dated 07.04.2020.

¹⁹ Economic Times, India sending hydroxychloroquine to 55 coronavirus-hit countries dated 16.04.2020, available at: [https://economictimes.indiatimes.com/news/politics-and-nation/india-sending-hydroxychloroquine-to-55-coronavirus-hit](https://economictimes.indiatimes.com/news/politics-and-nation/india-sending-hydroxychloroquine-to-55-coronavirus-hit-countries/articleshow/75186938.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

[countries/articleshow/75186938.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/india-sending-hydroxychloroquine-to-55-coronavirus-hit-countries/articleshow/75186938.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

²⁰ DFGT Trade Notice No. 59/ 2019-2020, dated 28.03.2020.

²¹ DFGT Trade Notice No. 62/ 2019-2020, dated 28.03.2020.

²² DFGT Trade Notice No. 01/ 2020-2021, dated 07.04.2020.

²³ *ibid.*

²⁴ DFGT Public Notice No. 01/2015-2020, dated 07.04.2020.

²⁵ DFGT Trade Notice No. 60/ 2019-2020, dated 28.03.2020.

- (c) To facilitate self-certification under the European Union's Generalised System of Preference ("EU GSP") as applicants are unable to submit physical copy of Pre-Application Form, the Local Users for Registration ("REG") have been instructed to accept the scanned copies of pre-registration application and other documents submitted by applicant exporters for processing applications. The scanned copy of the issued REX numbers would be sent by email to the applicant exporter.²⁶
- (d) With regard to the manner of continuation of benefits under the Merchandise Exports from India Scheme ("MEIS") for shipments on or after 01.04.2020 as a result of the approval and introduction of the Remission of Duties and Taxes on Exported Products ("RoDTEP") scheme by Cabinet on 13.03.2020, to replace the ongoing MEIS scheme, it has been clarified that operational framework for the RoDTEP Scheme will be notified separately. Meanwhile the benefits under MEIS for any item/tariff line /HS Code listed in Appendix 3B, Table 2 will be available up to 31.12.2020 and whenever any item/tariff line/HS code is notified to be covered under RoDTEP Scheme prior to 31.12.2020, it will be removed from coverage under MEIS.²⁷

II MEASURES IMPLEMENTED BY MINISTRY OF SHIPPING

Measures implemented by the DG-Shipping fall under two broad categories:

- (A) Measures relating to health and safety; and
- (B) Port related measures.

These are explained below.

A. Health & Safety Compliance requirements

The DG Shipping, on 20.03.2020, issued an order with instructions to all major and minor ports for dealing with COVID-19 pandemic to ensure that the flow of goods by sea are not needlessly disrupted without compromising the safety of life and protection of the environment. The instructions included health and safety compliance requirements to be followed by all ports like requiring all vessels to submit the Maritime Declaration of Health to the concerned health authorities of the port at least 72 hours prior arrival, quarantine requirements for vessels with suspected and confirmed COVID-19 cases, and necessary quarantine period of 14 days for vessels arriving from any port in China.²⁸ If the Maritime Declaration of Health given by the master is found to be incorrect and not reflecting the factual conditions of health of persons on board the vessel, the master of the vessel is liable to be prosecuted as per applicable laws.²⁹

B. Port services

To ensure regular supply of goods in the country during the lockdown the Ministry of Home Affairs subsequently exempted seaports and its operational organisations from the lockdown to ensure regular supply of goods in the country.³⁰ However, in view of the restrictions placed on non-essential services by State Governments, it was clarified by the Ports Wing of the Ministry of Shipping that "*transport service for carriage of goods by water and any service connected with loading, unloading, movement or storage of goods in any port are essential services*" and that ports should act in compliance with DG Shipping order dated 20.03.2020.³¹

²⁶ DFGT Trade Notice No. 61/ 2019-2020, dated 02.04.2020.

²⁷ DFGT Trade Notice No. 03/ 2020-2021, dated 15.04.2020.

²⁸ DG Shipping Order No. 04 of 2020, F. No.7-NT(72)/2014, dated 20.03.2020.

²⁹ Ibid.

³⁰ MHA order No 40-3/2020-DMJ (A) dated 25.03.2020.

³¹ DG Shipping, Ports Wing, Office Order No. PD-I 4033/4/2020-PD-VII, dated 23.03.2020; See also Ministry of Shipping, SoP dated 11.03.2020.

Congestion at ports due to restriction on movement of trucks by states to and from ports during the lockdown also became an issue, to address this the Chief Secretaries were requested to sensitize the District Administration to allow restriction free movement of trucks and trailers to and from ports so that movement of goods is not affected in view of the order dated 23.03.2020 categorizing the same as essential services.³²

To ease the financial burden as a result of overall stoppage of downstream chains, DG Shipping on 31.03.2020 issued an advisory on non-charging of demurrage, ground rent beyond the allowed free period or any performance related penalty on non-containerized cargo during the period of effect of Covid-19 pandemic.³³ On the same day, Ministry of Shipping also issued Guidelines to major ports regarding exemptions/permission on penalties and issues relating to force majeure.³⁴ By invoking Section 53 of the Major Port Trust Act 1963, all Major Port were directed to ensure that no penalties, demurrage, charges, fee, rentals are levied by the Major Ports on any port user (traders, shipping lines, concessionaires, licensee etc.) for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo caused by reasons attributable to lockdown orders from 22.03.2020 to 14.04.2020. Hence, demurrage, ground rent over and above the free period, penal anchorage/ berth hire charges and any other performance related penalties that may be levied on port related activities have to be exempted or remitted by all Major Ports.³⁵

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³² Letter from Secretary, Ministry of Shipping dated 24.03.2020.

³³ DG Shipping Order No. 08 of 2020, F. No. MTO/Review Schedule-II(1)/2019, dated 31.03.2020.

³⁴ Ministry of Shipping Guidelines to Major Ports, No.PD-14300/4/2020-PD VII, dated 31.03.2020.

³⁵ Ibid.