

24/04/09

### Contradictory Indian import rules lead to confusion

Changes over the last months in Indian import rules have reclassified all non-hazardous waste and scrap as hazardous in its Part B of Schedule III. That rule change appears at first to require the completion of the hazardous waste movement form (Form-9) for all imports into India of scrap such as that of Iron and Steel, of Paper, etc.,.

However the re-classification apparently does not mean that controls are applied as for hazardous waste as Rule 14 (2)(ii) states "The import of the hazardous wastes specified in Part B of Schedule III shall not require Prior Informed Consent of the country from where it is imported;"

On top of this there is a footnote hidden in the Indian rules that states for imports of iron and steel scrap and certain other asterisked scrap and waste that "import permitted in the country without any licence or restriction."

However Rule 16(5) sets out the procedure for import of Hazardous Waste and requires that the Port and Customs authorities shall ensure that the 'shipment is accompanied by the Movement Document in Form 9 and the test report of analysis of the hazardous waste consignment in question, from a laboratory accredited by the exporting country.'" Some Port and Customs authorities are respecting this rule of what they "shall ensure" before any footnote.

These contradictions result in practice with some authorities requiring the hazardous waste movement Form-9 and others not, so in some Indian ports some shipments are impounded, in others imports are unhindered.

Another rule change of 23rd March 2009 requires that metallic waste and scrap in shredded form is accompanied by a certificate stating that "the consignment does not contain any types of arms, ammunition, mines, shells, cartridges, radioactive contaminated or any other explosive material in any form either used or otherwise." There are problems with the requirements of such a certificate in finding third party certifiers willing to take on the liability of stating the 'consignment does not contain radioactive contaminated material in any form' which is a physical and chemical impossibility since the 1950ies.

BIR proposes that India uses instead the form regarding radioactive material in scrap metal as recommended by UN-ECE, and that major scrap exporters with expertise in monitoring scrap metal for radioactive contamination be allowed to self-certify that their product has been checked. Also India needs to update and expand its list of approved independent certification agencies. These proposals are to avoid the unintended effect of promoting a trade in fake certificates as already encountered by certain authorities.

Furthermore because of difficulties experienced with importing paper for recycling, recall it is reclassified in the Indian rules as hazardous waste, the requirement of Form-9 caused the rules to be suspended pending clarifications.

Now the Indian elections are delaying fixing of these confusing Indian rules. Nevertheless the BIR Ambassador to India is in contact with the Indian administration to assist in formulating rules that achieve the governments aims of protecting its people and its environment and allowing Indian industry to access needed secondary raw materials. The BIR secretariat is in contact with the United Nations secretariats seeking to promote the existing UN rules to help India better formulate these small but important elements of its domestic legislation. The open question is whether these complex rules and their frequent changes amount to a WTO TBT.

Situation as of March / April 2009. Author Ross Bartley, BIR Environmental & Technical Director.

Hypertext links to referenced Indian rules are:

Rule 14 (2)(ii) See p.82 of <[http://envfor.nic.in/legis/hsm/HAZMAT\\_2265\\_eng.pdf](http://envfor.nic.in/legis/hsm/HAZMAT_2265_eng.pdf)>

Form-9 See p.130 of <[http://envfor.nic.in/legis/hsm/HAZMAT\\_2265\\_eng.pdf](http://envfor.nic.in/legis/hsm/HAZMAT_2265_eng.pdf)>

Part B of Schedule III See p.98 of

<[http://envfor.nic.in/legis/hsm/HAZMAT\\_2265\\_eng.pdf](http://envfor.nic.in/legis/hsm/HAZMAT_2265_eng.pdf)>

metallic waste and scrap in shredded form

<<http://164.100.9.245/exim/2000/pn/pn08/pn16308.htm>>

Indian Government approved list of inspection certification bodies (See "LIST .." ) of [ <http://164.100.9.245/exim/2000/apndxftp0809/appnd-5.pdf> ] also (see \*WARNING below)

Radioactivity Pre-Shipment Inspection Certificate (See Annexure-I to Appendix 5) of <<http://164.100.9.245/exim/2000/apndxftp0809/appnd-5.pdf>>

UN-ECE Recommendation (See P.33 Annex I) of

<[http://www.unece.org/trans/radiation/docs/recommendations\\_e.pdf](http://www.unece.org/trans/radiation/docs/recommendations_e.pdf)>

Suspension of certain rules for Paper

<<http://164.100.9.245/exim/2000/cir/cir08/cir7808.htm>>

\*WARNING BEWARE OF TEMPORARY SUSPENSIONS AND ADDITIONS TO THE INDIAN GOVERNMENT APPROVED LIST.

The amendments by DGFT include, but may not be limited to Public Notices :

06(RE-2005)/ 2004-2009 of <http://164.100.9.245/exim/2000/pn/pn05/pn2605.htm> of 03.05.2005 ; 11(RE-2005)/ 2004-2009 of 26.05.2005 ; 26(RE-2005)/ 2004-2009 of 13.07.2005 ; 33(RE-2005)/ 2004-2009 of 26.07.2005 ; 38/(RE-2005)/2004-2009 of 11.08.2005 ; 39/(RE-2005)/2004-2009 of 16.08.2005 ; 51/(RE-2005)/2004-2009 of 16.09.2005 ; 44(RE-2007)/ 2004-2009 of 03.09.2007 ; 89(RE-2008)/2004-09 of 03.10.2008 ; 97(RE-2008)/2004-09 of 22.10.2008 ; 141(RE-2008)/2004-09 of 04.2.2009

Links are:

<<http://164.100.9.245/exim/2000/cir/cir05/cir3205.htm>>

<<http://164.100.9.245/exim/2000/pn/pn05/pn0605.htm>>

<<http://164.100.9.245/exim/2000/pn/pn05/pn1105.htm>>

<<http://164.100.9.245/exim/2000/pn/pn05/pn2605.htm>>

<<http://164.100.9.245/exim/2000/pn/pn05/pn3305.htm>>

<<http://dgftcom.nic.in/exim/2000/pn/pn05/pn3805.htm>>

<<http://dgftcom.nic.in/exim/2000/pn/pn05/pn3905.htm>>

<<http://dgftcom.nic.in/exim/2000/pn/pn05/pn5105.htm>>

<<http://164.100.9.245/exim/2000/pn/pn07/pn4407.htm>>

<<http://164.100.9.245/exim/2000/pn/pn08/pn8908.htm>>

<<http://164.100.9.245/exim/2000/pn/pn08/pn9708.htm>>

<<http://164.100.9.245/exim/2000/pn/pn08/pn14108.htm>>

Afterword

Whilst companies may make their own decisions on how they comply with the Indian legislative requirements for various certificates, self-declarations, etc., and indeed under the current confusing circumstances whether they take chances by trading with India at all. The BIR International Trade Council (BIR-ITC), after discussing this today, recommends companies trading with India confirm the Forms and/or certificates and/or self-declaration requirements as may be necessary with their customers in India. BIR cannot endorse any "home made" certificates already in circulation or "home made"

declarations. or provide such papers, nor will BIR publish unofficial summaries of Indian legislation. However, BIR will provide, comment and advise on, the official links as collected above. As such linked information is outside the control of BIR, BIR accepts no responsibility for the completeness of any information provided. BIR advice is given to the best of our knowledge, but without warranty. The application of this advise is at the users own responsibility..

The Recycling Industries should acknowledge the great deal of effort the Indian Government administrators have already taken in improving their legislation in order to exclude or minimise imports of unwanted hazardous wastes, radioactive contamination and other wastes that may contaminate recyclables. Further adjustments in order to clarify the forms required, and possibly harmonise the certificates, self-declarations, etc., that are needed and to update the list of Pre-Shipment Inspection (PSI) Agencies listed under Appendix – V of the Handbook of Procedures, is encouraged.

BIR will endeavour to encourage and assist if needed the Indian Administration to promulgate better regulation to enable trade in recyclables whilst protecting human health and the environment.