

Guidelines for the Implementation of Import Licensing Procedures in ASEAN

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A. PREAMBLE

In pursuit of the ASEAN Economic Community (AEC), guided by the ASEAN Charter, and in accordance with the ASEAN Trade in Goods Agreement (“ATIGA”) and the WTO Agreement on Import Licensing Procedures (“WTO ILA”), this Guidelines for the Implementation of Import Licensing Procedures (“ILP Guidelines”) for the minimization of the barrier elements of import licensing systems consistent with Article 44 (Import Licensing Procedures) of ATIGA is hereby adopted. These guidelines shall not replace, alter or in any way change the rights and obligations of ASEAN Member States as set out in the ATIGA and WTO ILA.

Recognising that the full implementation of this ILP Guidelines would enhance national welfare for each Member State, particularly for the core disciplines of transparency and non-discrimination, and in response to the call of the Eminent Persons Group on the ASEAN Charter during the 12th ASEAN Summit in Cebu for Member States to “calibrate the traditional policy of non-intervention in areas where the common interest dictates closer cooperation”, ASEAN Member States agree to establish a peer review mechanism to learn from each other’s experiences, enhance policy-relevant interaction, and encourage Member States to move towards unimpeded trade flows necessary for realizing the AEC by 2015.

To that end, each Member State has agreed to adhere to these guidelines as set out in the following understanding.

B. DEFINITIONS

Import licensing, as defined in the WTO ILA, refers to administrative procedures¹ used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than those required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing member.

Automatic import licensing, as defined in Article 2.1 of the WTO ILA, is import licensing where approval of the application is granted in all cases, and which is in accordance with the requirements of Article 2.2(a) of the WTO ILA so as to not have a restricting effect on imports subject to such automatic licensing.

Non-automatic import licensing is defined as import licensing not falling within the definition contained in paragraph 1 of Article 2 of the WTO ILA.

Quotas or quantitative restrictions are restrictions on specific products where maximum quantities or values of goods are authorized for import.

ASEAN Harmonized Tariff Nomenclature (AHTN), the 8-digit commodity classification system, adopted by Member States in 2002.

C. OBJECTIVES

This ILP Guidelines is in accordance with the ATIGA and WTO rights and obligations. It aims to:

- (a) simplify and make transparent import licensing systems;

¹ Those procedures referred to as “licensing” as well as other similar administrative procedures

- (b) ensure their uniform and equitable application and reasonable and impartial administration;
- (c) ensure that the restrictions governed by such import licensing mechanisms are justified within the WTO legal framework; and
- (d) prevent procedures applied for granting import licenses from having in themselves, restrictive or distortive effects on imports.

For this purpose, elements in non-automatic licensing that impede trade are identified with a view to removing such barriers that are not in accordance to rights and obligations under WTO and ATIGA and working towards automatic import licensing to the extent possible.

This ILP Guidelines lay down the actions that are necessary for reducing or eliminating those elements of import licensing systems that run counter to the principles of neutrality, transparency, and predictability of import licensing systems.

D. SCOPE

Import licensing systems encompass import licensing procedures and their underlying rules and regulations, requirements and manner of implementation.

These ILP Guidelines encompass the rules and regulations, requirements, procedures, as well as the manner of implementation by Member States of their respective import licensing systems, i.e. from the submission of the application, to the evaluation and approval of the license.

Each guideline should be specifically implemented for every commodity subject to import licensing.

E. PERMITTED IMPORT LICENSING

1. In general, Member States should not adopt or maintain non-tariff restrictions or prohibitions through import licensing or quotas on the importation of goods from other Member States, except in accordance with that Member State's WTO rights and obligations or the ATIGA.

Notwithstanding paragraph 1, Member States may adopt or maintain non-tariff restrictions through import licensing or quotas as provided for under GATT 1994 and ATIGA:

- (a) the application of standards or regulations for the classification, grading, or marketing of commodities [*GATT 1994 Art XI Para 2b*];
- (b) to restrict quantities or remove temporary surpluses of domestic substitutes of agricultural or fishery products or restrict production of animal products that depend on the imported commodity [*GATT 1994 Art XI Para 2c*], provided public notice is given on the total quantity or value of the affected product, and the proportion of imports to domestic production is not reduced [*GATT 1994 Art XI Para 2*];
- (c) measures to (i) protect public morals, (ii) protect human, animal, and plant life and health, (iii) conserve exhaustible natural resources, (iv) protect national treasures; (v) secure compliance with laws relating to customs enforcement, monopolies, protection of intellectual property rights, and prevention of deceptive practices; measures relating to (vi) gold and silver, (vii)

products of prison labor, (xi) obligations under intergovernmental commodity agreements, (xii) products in temporary short supply; provided such measures are not applied in a discriminatory manner or are not a disguised restriction on trade [ATIGA Art 8];

- (d) measures to protect national security relating to (i) fissionable materials or raw materials, (ii) arms, ammunition, implements of war, or military supplies, (iii) critical public infrastructure, (iv) domestic or international emergency, or (v) obligations under the United Nations Charter for international peace and security [ATIGA Art 9].
- (e) measures for balance-of-payment purposes [GATT 1994 Art XII, Annex 1A of the WTO Agreement, ATIGA Art 10];
- (f) waivers under exceptional cases for the special consideration of rice and sugar [ATIGA Art 24];
- (g) measures relating to hazardous wastes or substances [ATIGA Art 42 Para 7];
- (h) monopoly of the importation of any product [GATT 1994 Art 2 Para 4].]

F. GENERAL FEATURES OF PERMITTED IMPORT LICENSING SYSTEMS

In accordance with the procedures in the WTO ILA and ATIGA:

- (a) Import licensing systems of Member States should be neutral, fair, equitable, transparent and predictable.

- (b) Automatic import licensing may be used by Member States when more appropriate procedures are not available, but maintained only for as long as the circumstances, which gave rise to its introduction, prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.
- (c) Non-automatic import licensing of Member States should not have trade-restrictive or distortive effects on imports in addition to those caused by the imposition of the restriction.
- (d) Elements in non-automatic import licensing that impede trade should be identified with a view to removing such barriers and working towards automatic import licensing to the extent possible.

G. TRANSPARENT GOODS COVERAGE

Goods covered by import licensing systems should be listed at the most disaggregated level of the AHTN, and to the extent possible, published/notified.

H. NEUTRALITY ACROSS APPLICANTS

Applications for import licensing should be open to all persons or entities that fulfill the legal and administrative requirements of the Member State.

I. TRANSPARENCY AND PREDICTABILITY THROUGH PUBLICATION AND NOTIFICATION

1. ILP should be subject to Articles 11 (Notification Procedures), 12 (Publication and Administration of Trade Regulations) and 44 (Import Licensing Procedures) of ATIGA.

J. TRANSPARENT AND PREDICTABLE REQUIREMENTS

1. Application forms and procedures should be simple and require only information and documents that are strictly necessary.
2. Applicants should have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants should not be required to approach more than three administrative bodies.

K. PREDICTABLE PERIOD OF SUBMISSION, PROCESSING, VALIDITY

1. Member States should allow a reasonable period for the submission of the application, or at least sixty (60) days if there is a closing date, with extension if an insufficient number of applications were received within this period.
2. For automatic import licensing, applications may be submitted on any working day prior to the customs clearance of the goods.
3. The license validity period should also be reasonable and not be so short as to preclude imports from distant sources.

L. TRANSPARENT AND PREDICTABLE PROCESSING

1. Applications for automatic import licensing that are submitted in appropriate and complete form should be approved immediately upon receipt or within ten (10) working days.

2. For non-automatic import licensing, applications on a first-come-first-served basis should be processed within thirty (30) days, and those considered simultaneously, within sixty (60) days, from the closing date of the application period.
3. No application should be refused for minor documentation errors. No penalty greater than a warning should be given for omissions or mistakes that are obviously made without fraudulent intent or gross negligence.
4. Non-automatic licenses should be allocated taking into account the applicant's import performance. Consideration should be given as to whether licenses issued to applicants in the past have been fully utilized during a recent representative period. In cases where licenses have not been fully utilized, the Member State should examine the reasons for this and take these reasons into consideration when allocating new licenses. Consideration should also be given to ensuring a reasonable distribution of licenses to new importers, taking into account the desirability of issuing licenses for products in economic quantities. Special consideration should be given to those importers importing products originating in least developed countries.
5. Unapproved applicants for non-automatic licenses should be given the reason upon request and have the right of appeal or review in accordance with the domestic regulation or procedures of importing Members.

M. EFFECTING THE LICENSED IMPORTATION

1. Licensed imports should not be refused entry for minor variations in value, quantity, or weight from that

specified in the license, that are due to normal handling and transport.

2. For quotas, Member States should not prevent importation from being effected in accordance with the issued license nor discourage full utilization.
3. For non-automatic import licensing, in applying paragraph 8 of Article 1 of the WTO Agreement on Import Licensing Procedures, compensating adjustments may be made in future license allocations where imports exceed a previous license level.

N. IMPLEMENTATION AND PEER REVIEW

1. This ILP Guidelines should be implemented in accordance with Chapter 4 (Non-Tariff Measures) of ATIGA.
2. A peer review system to assess the implementation progress of a Member State by other Member States should be established to encourage conformity with this ILP Guidelines and adherence to commitments.
3. Member States should commit to transparency and information sharing that is required by the peer review system. Guidelines A to M above shall serve as the criteria against which performance will be reviewed.