



**THE COORDINATING COMMITTEE ON THE IMPLEMENTATION OF THE ATIGA**  
**SUBMISSION FORM FOR CASES OF THE 'MATRIX OF ACTUAL CASES'**  
**ON TRADE BARRIERS**

<b>CASE REFERENCE ID</b> <i>(For Secretariat's use)</i>	<b>REPORTING COUNTRY</b>	<b>INVOLVING COUNTRY</b>
C XXXX	Viet Nam	Indonesia
<b>DATE OF REPORT SUBMISSION</b>	<b>HS CODE AND PRODUCT DESCRIPTION</b> <i>(where applicable)</i>	
21 Feb 2018	LOCAL CONTENT REQUIREMENTS FOR 4G LTE MOBILE DEVICES	
<b>DESCRIPTION OF TRADE BARRIER FACED</b>		
<i>Please provide a description of the situation</i>		
<p>In 3 July 2015, Indonesia's Ministry of Communication and Information Technology (KOMINFO) has adopted Regulation 27/2015 related to mandatory local content requirements for the 4G LTE spectrum, affecting both the networks and the devices that use the networks. The regulation was: Technical Requirements for Equipment and Facilities for Purpose of Long Term Evolution Time Division Duplexing (Lte Tdd) and Long-Term Evolution Frequency Division Duplexing (Lte Fdd) Broadband Services and Procedure for Calculation of Local Content in Telecommunication Devices. This regulation appears to build on Ministry of Industry (MOI) Regulation 69/2014 on the Conditions and Method of Calculating the Value of the Land Component Level Role in Electronic and Telematics Industry, adopted in September 2014. In July 2016, the Ministry of Industry also issued the Regulation No. 65/2016 contained technical guidelines for the calculation of local content and a certificate verifying the fulfilment of the local content requirements after receiving the report of local content verification conducted by surveyors.</p> <p>These regulations stipulate that products using the 4G LTE spectrum – including LTE smart phones – that are sold on the Indonesian market would have to meet certain specifications for local content. LTE time division duplexing (TDD) devices would have to meet a threshold of 30% local content upon issuance of the regulation, with the threshold increasing to 50% 5 years thereafter. For LTE frequency division duplexing (FDD) devices, the initial local content threshold would be 20%, increasing to 30% within two years.</p> <p>In addition, not only do the draft regulations appear to impose local content requirements benefitting investors who use Indonesian inputs, they also appear to make it significantly easier for Indonesian-owned companies to meet those local content thresholds than foreign-owned companies. According to the regulations, local content values will be weighted both by who produces the product (domestic versus foreign ownership) and where the product is produced (domestic versus manufacturing). For instance, an Indonesian company manufacturing in Indonesia gets 100% credit on the manufacturing value of Indonesian equipment and components that go into a 4G-enabled device; however, a similarly-situated foreign-owned firm manufacturing in Indonesia would get credit for only 75% of the value.</p>		

Further, a manufacturer using non-Indonesian inputs can nevertheless get credit for local content, but if it is 100% owned by Indonesians. Likewise, a joint venture between foreign and Indonesian partners can receive "local" manufacturing value credit even if using non-Indonesian inputs, on a sliding-scale based on the percentage Indonesian ownership in the JV. Thus, an Indonesian company using non-Indonesian inputs gets "local content" credit for 75% of the manufacturing value; a 50/50 JV with one Indonesian partner, using non-Indonesian inputs, gets "local content" credit for 50% of the manufacturing value; a foreign firm using foreign inputs gets no credit.

Viet Nam views that these regulations on local content requirements for the 4G LTE mobile devices may violate National Treatment, Application of Non-Tariff Measures, Import Licensing Procedures, and Technical Barriers to Trade obligations since the measures create unnecessary obstacles to trade. Viet Nam also considered that these regulations went against Article III:4 of GATT; Article 2 of Agreement on Technical Barriers to Trade; Article 1 of Agreement on Import Licensing Procedures and Article 2 of the TRIMs Agreement.

Viet Nam had questions about the verification process to obtain a certificate or statement from the Minister "in charge of governmental affairs in the industrial sector" to demonstrate that they had fulfilled the local content requirement. What was the procedure by which such a certificate or statement was obtained? Was the certificate or statement a prerequisite for other documents, such as other technical requirements or import licensing requirements? What were the consequences if a company was unable to fulfil the local content requirement and therefore could not obtain the certificate or statement?

Viet Nam would like to seek Indonesia's clarification on How is credit towards local content calculated for a foreign company when it manufactures a 4G enabled device in Indonesia using Indonesian equipment or inputs? How is credit towards local content calculated for a foreign company when it manufactures a 4G enabled device in Indonesia using foreign equipment or inputs?

And What would be the consequences for a foreign company if it were to sell 4G enabled equipment in Indonesia that does not meet the local content threshold?

Viet Nam also would like Indonesia to hold consultations with affected trading partner, including Viet Nam to bring such measures into conformity with the WTO and ATIGA agreements.

**REFERENCE TO ATIGA PROVISION**

*Please provide a reference to the ATIGA provision to support your case, where applicable*

REGULATION OF THE MINISTER OF COMMUNICATION AND INFORMATION ON TECHNICAL REQUIREMENTS EQUIPMENT AND/OR DEVICE TECHNOLOGY TELECOMMUNICATION STANDARDS-BASED LONG TERM EVOLUTION.

REGULATION OF THE MINISTER OF INDUSTRY OF THE REPUBLIC OF INDONESIA NUMBER 65 / M-IND / PER / 7 / 2016 CONCERNING RULES AND PROCEDURES FOR THE CALCULATION OF THE LOCAL CONTENT VALUE OF CELLPHONES, HANDHELD COMPUTERS, AND TABLET COMPUTERS

**ASEAN Trade in Goods Agreement (ATIGA)**

**Article 6**

**National Treatment on Internal Taxation and Regulation**

Each Member State shall accord national treatment to the goods of the other Member States in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 is incorporated into and shall form part of this Agreement, mutatis mutandis.

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**Article 40**

**Application of Non-Tariff Measures**

1. Each Member State shall not adopt or maintain any non-tariff measure on the importation of any good of any other Member State or on the exportation of any good destined for the territory of any other Member State, except in accordance with its WTO rights and obligations or in accordance with this Agreement.
2. Each Member State shall ensure the transparency of its nontariff measures permitted in paragraph 1 of this Article in accordance with Article 12 and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles in trade among the Member States.

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**Article 44**

**Import Licensing Procedures**

1. Each Member State shall ensure that all automatic and non- automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures as contained in Annex1A to the WTO Agreement.
2. Promptly after entry into force of this Agreement, each Member State shall notify the other Member States of any existing import licensing procedures. Thereafter, each Member State shall notify the other Member States of any new import licensing procedure and any modification to its existing import licensing procedures, to the extent possible sixty (60) days before it takes effect, but in any case no later than the effective date of the licensing

**WTO**

**General Agreement on Tariffs and Trade 1994**

**Article 3 National Treatment on Internal Taxation and Regulation**

**Agreement on Technical Barriers to Trade**

**Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies**

**Agreement on Import Licensing Procedures**

**Article 1 General Provisions**

**Agreement on Trade-Related Investment Measures (TRIMS)**

**Article 2 National Treatment and Quantitative Restrictions**

**LIST OF SUPPORTING DOCUMENTS PROVIDED** *(where applicable)*

### Guidelines for the Matrix of Actual Cases on NTMs/Trade Barriers

1. The cases lodged in the Matrix of actual cases will be classified into 3 categories:

Category	Description
<b>Category A: Resolved Cases</b>	<ul style="list-style-type: none"> <li>• Category A contains issues which have been resolved bilaterally/mutually by ASEAN Member States (AMSs).</li> <li>• Cases in other categories ( on-going or new cases) which have been resolved bilaterally/mutually will be classified as Category A.</li> <li>• Cases justified/verified/agreed as NTB-free will be removed from the Matrix for simplifying and making the Matrix user-friendly</li> </ul>
<b>Category B: On-going Cases</b>	<ul style="list-style-type: none"> <li>• Category B contains any previously raised cases that ASEAN Member States would like to discuss at CCA meetings.</li> </ul>
<b>Category C: New Cases</b>	<ul style="list-style-type: none"> <li>• Category C contains the newly lodged cases that ASEAN Member States wish to discuss at CCA meetings.</li> </ul>

2. Submission of Category C: New cases:

2.1 At CCA Meeting when ASEAN Member States raise new issues/case for discussions, such cases will be lodged into Category C: New cases.

2.2 Reporting country should inform the ASEAN Secretariat of these new issues by submission of the submission form and all relevant documents at least 4 weeks before each CCA Meeting in order to allow the responding country sufficient time to consult domestically. Should reporting country fail to raise a case within the time frame, such case will automatically be raised at the next CCA Meeting.

2.3 The responding country should provide the initial response at the CCA Meeting and should provide a written response to the reporting country, copied to other ASEAN Member States and the ASEAN Secretariat within 4 weeks after the CCA Meeting.

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2.4 After the new case is lodged into the Matrix under Category C: New cases, such case will be re-categorised into Category B: On-going cases at the next CCA meeting.

3. Addressing Category B: On-going cases:

3.1 Reporting and responding country may raise any on-going case for discussion at CCA Meetings.

3.2 On-going cases will be re-categorised into re-solved cases once mutually agreed upon by the reporting and responding country.

4. In case that the barrier element/NTBs effect is found in any case lodged, the CCA shall provide recommendations on how to address the issue to be submitted to the AFTA Council, through SEOM for endorsement. Should any case is justified/verified/agreed as NTB-free, it will be removed from the Matrix.

5. Recalling the decision of the 26<sup>th</sup> AFTA Council Meeting, to exercise the transparency and enhance the confidence of the private sectors on ASEAN process, the Matrix of actual cases will be uploaded onto the website of the ASEAN Secretariat within 1 month after each CCA Meeting. The information to be reflected in the Matrix of actual cases should be agreed upon by concerned parties (reporting and responding Member States). The specific information on the Matrix of actual cases should not contain specific details on which companies are involved in the cases to protect business confidentiality.

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