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Draft



THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN

**DRAFT REGULATIONS ON IMPORT AND EXPORT
LICENSING OF 2013 (1391)**

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Draft Regulations on Import and Export Licensing

Objectives

Article 1

The objectives of this Regulation are:

1. to regulate the rules and procedures governing automatic and non-automatic licensing with respect to imports and exports,
2. such rules and procedures shall be in accordance with Afghanistan's international agreements, international best practices and;
3. shall be in accordance of the Law of the Islamic Republic of Afghanistan on Foreign Trade in Goods ("the Foreign Trade Law").

Terms

Article 2

Terms used in this Law have the following meanings:

- 2.1 **Goods:** Any movable tangible articles or assets, but not securities, commercial papers or cash.
- 2.2 **Import licensing:** Administrative procedures requiring the submission of an application and/or other documentation to the Competent Authority as a prior condition for importation of goods.
- 2.3 **Export licensing:** Administrative procedures requiring the submission of an application and/or other documentation to the Competent Authority as a prior condition for exportation of goods.
- 2.4 **Automatic licensing:** Licensing to collect statistical and other factual information on imports or exports and where the approval for the application of a license is granted in all cases.
- 2.5 **Non-automatic licensing:** Licensing not falling within the definition of automatic licensing; i.e. the granting of which is made subject to fulfilling specified criteria or requirements.

General Rules on Licensing

Article 3

The following shall govern automatic and non-automatic import and export licenses:

- 3.1 All persons who have the right to engage in foreign trade activities, in particular those persons specified in Article 6 of the Foreign Trade Law, shall be eligible to apply for and obtain licenses, after fulfilling the necessary requirements.

- 3.2 The applicant for a license shall in each case apply to (the Competent Authority). Where necessary, the Competent Authority shall coordinate with other relevant ministries or state bodies to secure approval of licenses. The applicant, however, shall only have to approach the Competent Authority in order to obtain the license.
- 3.3 The Competent Authority shall be the sole authority to decide upon applications for Import and Export licenses.
- 3.4 The procedures and requirements for applying and obtaining licenses shall be the same for all eligible persons. They shall moreover be neutral in application and must be administered in a fair and equitable manner.
- 3.5 A single license may be obtained for one or more good(s) and/or category(ies) of goods.
- 3.6 Application forms, including any renewal forms shall be as simple as possible. Only documentation and information that is strictly necessary for the proper functioning of the licensing regime may be included in application forms.
- 3.7 No license application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in cases where there is an omission or error with respect to documentation or procedures, where such mistake is clearly made without fraudulent intent or gross negligence.
- 3.8 Any refusal to issue a license or to honor a license must be provided to the applicant in writing if the applicant so requests.
- 3.9 The Competent Authority shall have the right to cancel an import license in any of the following justifiable cases:
 1. A decision was made to prohibit the Import or Export of goods subject to such license, in accordance with the provisions of this Regulation, after the license has been issued;
 2. A license holder violates the conditions of a license;
 3. A license was issued in contradiction to this Regulation or other relevant legislation; or
 4. A decision was based on incorrect information or was obtained by dishonesty or deceit.
- 3.10 In cases referred to in Article 3.9(1), the license shall not be cancelled for quantities of goods that have been paid for but not delivered, except in the case of urgent circumstances or *force majeure*.
- 3.11 In case of cancellation, the Competent Authority shall not refund the license fee to the importer or exporter.

- 3.12 The applicant shall have the right to appeal to the Commercial Court or other appropriate court in cases where the Competent Authority refuses to issue a license, or when there has been a premature unjustifiable cancellation of an import license.
- 3.13 The same provisions for obtaining a license shall apply for its renewal.
- 3.14 Licenses are transferable with the approval of the issuing Competent Authority.
- 3.15 Licenses (or certified copies by the Competent Authority) must be presented to customs along with the customs declaration when importing goods that require an import license. A fee reflecting the cost of services rendered shall be issued for certified copies.
- 3.16 Licensed imports shall not be refused by the Afghanistan Customs Directorate for minor variations in value, quantity or weight from the amount specified on the license due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practices.
- 3.17 In the event of a loss of a license, the licensee may apply for a replacement. The Competent Authority shall re-issue a new license within 1 business day and may charge a fee corresponding to the services rendered.
- 3.18 The Competent Authority shall maintain, update and make available to the general public two lists: A list of goods subject to automatic licensing and a list of goods subject to non-automatic licensing. Any modifications to these lists must be published at least 45 days before entering into effect.
- 3.19 The Competent Authority shall comply with any notification requirements regarding licensing that may be set forth in international agreements. Notification procedures and requirements shall be elaborated in regulations.
- 3.20 Foreign exchange necessary to pay for licensed imports shall be made available to license holders on the same basis as to importers of goods not requiring import licenses.
- 3.21 The fact that a good is subject to import or export licensing shall in no way necessitate that the goods be subject to testing at the border by any authority. The Customs Directorate shall merely request that the importer or exporter provide a copy of the license.
- 3.22 The Competent Authority shall maintain a register on issued licenses.
- 3.23 Where necessary, the Competent Authority shall coordinate with other ministries or state bodies to ensure that the procedural and substantive rights of applicants for a license set forth in these Regulations are adhered to.

Automatic Licensing
Article 4

In addition to Article 3, the following shall govern automatic import and export licenses:

- 4.1 Automatic licensing shall only be maintained for as long as the circumstances which gave rise to its introduction continue to exist and for as long as its administrative purposes cannot be achieved without the licensing.
- 4.2 Automatic licensing procedures shall not be administrated in such a manner that it has the effect of restricting imports subject to automatic licensing. Applications may be submitted on any working day prior to the customs clearance of the goods. Applications for licenses, when submitted in appropriate and complete form, shall be approved immediately if possible and in any event within a maximum of 5 working days.
- 4.3 Requirements for applying for an automatic license shall be the following:
 - a. Application;
 - b. Certificate of registration for legal entities or TIN for natural persons; and
 - c. Payment of the license fee, if applicable.
- 4.4 Automatic licenses shall be valid for one year and shall be renewed automatically upon application. The licensee shall have the right to be engaged in a foreign trade activity for an unlimited number of shipments during the period of validity of the license.

Non-Automatic Licensing
Article 5

In addition to Article 3, the following shall govern non-automatic import and export licenses:

- 5.1 Non-automatic licensing shall not have trade-restrictive or trade-disrupting effects beyond those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.
- 5.2 In the case of licensing requirements for purposes other than the implementation of quotas, sufficient information shall be published for other governments and traders to know the basis for granting and/or allocating licenses.
- 5.3 The overall amount of quotas to be applied by volume and/or value, the opening and closing dates of quotas and any changes thereof shall be published 21 days prior to the effective date of implementation in the Official Gazette or a major national newspaper.

- 5.4 Where an international agreement so requires, and subject to any additional or different rules therein, the following measure shall be taken:
- a. In the case of quotas allocated among supplying countries, interested countries having an interest in supplying the good concerned shall be promptly informed of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and this information shall be published 21 days prior to the effective date of implementation in the Official Gazette or a major national newspaper.
 - b. Afghanistan shall provide, upon the request of any party signatory of the international treaty and having an interest in the trade in the good concerned, all relevant information concerning the administration of the restrictions; the import licenses granted over a recent period; the distribution of such licenses among supplying countries; and where practicable, statistics (i.e. value and/or volume) with respect to the goods subject to licensing.
- 5.5 The requirements for obtaining non-automatic import licenses shall be the following:
- a. Application;
 - b. Certificate of registration for legal entities or TIN for natural persons;
 - c. Payment of the license fee; and
 - d. In the case of trade in goods that may cause a threat to safety, health, environment, national security, intellectual property or public order and morals, the trader may be requested to submit documents demonstrating the qualification to import, export, transport, and/or store the specific good without impeding the aforementioned objectives. In certain cases, the importer may be requested to provide information regarding the intended use of the good.
- 5.6 The period for processing applications shall be no longer than 30 days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than 60 days if all applications are considered simultaneously. In the latter case, the period for processing applications shall be considered to begin on the day following the closing date of the announced application period.
- 5.7 The period of validity of non-automatic licenses shall be of reasonable duration and not so short as to prevent imports. The period shall be in accordance with the terms specified in the license in the case of quotas (e.g. fulfilling the quotas). In other cases, non-automatic licenses shall be valid for one year. The licensee shall have the right to import an unlimited number of shipments during the period of validity of the license, but not exceeding the quota in case of quota requirements.
- 5.8 When administering quotas, importation may not be prevented from being effected in accordance with the issued licenses. Importers shall not be discouraged from the full utilization of quotas.

- 5.9 When issuing licenses, the Competent Authority shall take into account the desirability of issuing licenses for goods in economically viable quantities.
- 5.10 In allocating licenses, the Competent Authority shall consider the import performance of the applicant. In this regard, the Competent Authority shall take into account 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 reasons for this shall be examined and shall be taken into consideration when allocating new licenses. Consideration shall also be given to ensure a reasonable distribution of licenses to new importers, taking into account the desirability of issuing licenses for goods in economically viable quantities.
- 5.11 In the case of quotas administrated through licenses which are not allocated among supplying countries, license holders shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the license shall clearly stipulate the country or countries concerned.

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