

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence- Freedom- Happiness

No.41/2005/QD-TTg

Hanoi, March 2, 2005

DECISION OF THE PRIME MINISTER

Promulgating the regulation on goods import licensing

THE PRIME MINISTER

Pursuant to the Law on Organization of the Government dated December 25, 2001;

At the proposal of the Minister of Trade in Report No. 0135/TM-XNK dated January 27, 2005,

DECIDES:

Article 1. To issue together with this Decision the Regulation on goods import licensing.

Article 2. This Decision takes effect as from September 1, 2005. The Ministers of Trade; Industry; Agriculture and Rural Development; Fisheries; Culture and Information; Health; Post and Telematics; and Finance, the State Bank of Vietnam, the General Department of Customs and other State agencies competent to license goods import shall have to revise and adjust documents guiding the import of goods under their respective management before September 1, 2005, so as to make them suit the provisions of the Regulation on goods import licensing, issued together with this Decision.

Article 3. The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies and the presidents of the provincial/municipal People's Committees shall have to implement this Decision.

FOR THE PRIME MINISTER

DEPUTY PRIME MINISTER

(Signed and sealed)

Vu Khoan

REGULATION ON GOODS IMPORT LICENSING

(Issued together with the Prime Minister's Decision No. 41/2005/QĐ-TTg dated March 2, 2005)

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Regulation prescribes basic principles, forms and procedures for import licensing to be applied by import-licensing agencies in dealing with the importation of goods subject to import management under licenses.

Article 2. Interpretation of terms

1. "Import licensing procedures" means the processes and procedures through which the importation of goods is licensed, ranging from requirements on applications for import licenses, to the procedures for receiving and processing the application and making decisions by agencies that have licensing competence.
2. "Import-licensing agencies" means the State agencies with import licensing competence according to law provisions.
3. "Applicants for import licenses" means organizations and individuals entitled to import goods according to law provisions.
4. "Automatic import licensing" means a form of licensing to be applied under specific conditions, which, however, does not aim to restrict import and requires applications to be approved in accordance with the provisions of Article 4 of this Regulation.
5. "Non-automatic import licensing" means a form of licensing not falling within the definition automatic import licensing.
6. "Import goods subject to management under licenses" shall be prescribed by the Prime Minister for each period, except for those on the list of goods subject to automatic import licensing.

Article 3. Import licensing principles

1. To clarify import-licensing procedures

a) The import licensing shall be prescribed in a simple, transparent and objective manner.

b) Import-licensing agencies shall notify documents and information required in applications for import licenses concretely enough for the license applicants to know and implement. All regulations and information concerning procedures for the submission of applications, including conditions for organizations and individuals to be eligible to make such applications, import licensing agencies to be approached, and lists of goods subject to import licensing shall be published in the Official Gazette within twenty one (21) days before such regulations take legal effect, and at the same time, be published on the websites of the import-licensing agencies and publicly posted at such agencies' offices. Any exception or changes in regulations relating to import licensing procedures or lists of goods items subject to import licensing shall also be published in the same manner and within the same time periods as specified above.

2. Procedures for the submission of applications for import licenses and procedures for the extension of import licenses

a) The applicants for import licenses shall have to approach only one agency in connection with an application. In cases where it is necessary to approach more than one agency, the number of such agencies must not exceed three (3).

b) Procedures for the submission of applications for import licenses or procedures for extension of import licenses (if any) shall be prescribed in a simple and clear manner. The time limit for the submission of application (if any) shall be prescribed to be at least twenty one (21) days and may be extended in cases where import-licensing agencies have not yet fully received the applications within such time limit. The contents of the applications for import licenses or for extension thereof shall be prescribed in a simple and clear manner.

c) Import-licensing agencies shall not refuse applications for small mistakes on information, provided that such mistakes do not alter the important and basic contents of such applications. In case of mistakes or errors related to documents or

procedures, import licensing agencies may issue appropriate cautioning or warning notices, provided that such mistakes or errors are not attributed to fraudulence or negligence.

d) In case applications are refused, the licensing agencies must clearly state the reasons for such refusal.

e) It is not allowed to refuse the customs clearance for licensed import goods only for the reasons of little disparities in their value, quantity or weight as compared to the figures inscribed in licenses, which have arisen in the course of goods delivery, or for reasons of the nature of goods loading and unloading as well as other little disparities compatible to normal trading practices.

f) The access to foreign exchange for the importation of goods under licenses shall apply on an equal footing with goods imported without import licenses and be compatible with current regulations on foreign exchange management.

Chapter II

IMPORT LICENSING FORMS

Article 4. Automatic import licensing

Apart from the general principles prescribed in Article 3 of this Regulation, automatic import licensing must also comply with the following provisions:

1. All applicants for import licenses, if meeting the legal requirements on eligibility for automatic import licensing, may submit are entitled to submit applications and be licensed automatically.
2. Applications for automatic import licensing shall be submitted to licensing agencies before goods are cleared from customs procedures.
3. Valid applications for automatic import licensing shall be approved by licensing agencies right after a reasonable period of time in terms of administrative procedures, which, however, must not exceed ten (10) working days after receiving the valid applications; the customs clearance shall be effected only after the issuance of automatic import licenses.

The provisions on valid applications shall be published by the licensing agencies in a clear and specific manner as prescribed in Article 3 of this Regulation.

4. The Prime Minister authorizes the Minister of Trade, on the basis of the practical situation and demands and after consulting with concerned agencies, to announce (or adjust the existing) lists of goods imported under automatic import licenses and the grant of import licenses for such goods. In cases where the automatic import licensing is no longer necessary, it shall be immediately annulled.

Article 5. Non-automatic import licensing

Apart from the principles prescribed in Article 3 of this Regulation, the non-automatic import licensing must comply with the following provisions:

1. In cases where licenses are used to administer import quotas or other import management measures, they shall not cause further obstacles to import goods. The procedures for non-automatic import licensing shall be prescribed in compatibility with the scope and duration of application of import management measures and shall not complicate the application of such import management measures.

2. In cases where licensing does not aim to create quantitative restriction, licensing agencies shall announce the basis for granting import licenses for domestic as well as foreign organizations and individuals to know.

3. In cases where import quotas are allocated among supplying countries, the import-licensing agencies of Vietnam shall announce in time the total volume of import quotas calculated in terms of quantity or value, the time of commencement and completion of quota allocation for the governments of supplying countries, domestic as well as foreign organizations and individuals to know.

4. All applicants for import licenses are equal in the submission of applications and in the process of consideration for licensing. In cases applicants are refused, the import-licensing agencies must clearly state the reasons therefor; applicants may lodge complaints to agencies with licensing competence, requesting such agencies to review the refusal according to the law provisions on import licensing.

5. In cases where licenses are granted on the first-come first served basis, the time limit for consideration of applications shall not exceed thirty (30) days after import

management agencies receive valid applications. In cases where import management agencies consider all applications simultaneously, the time limit for consideration thereof shall not exceed sixty (60) days starting from the announced deadline for submission.

6. The period of license validity shall be of reasonable duration and not be so short as to make the importation infeasible. The valid duration shall not be prescribed at such levels that exclude the importation of goods from distant sources, except for cases where goods must be brought into the country immediately in order to satisfy unexpected short-term demands.

7. Import management agencies shall not prevent the importation from being effected in accordance with the issued licenses as well as the full utilization of allocated quotas.

8. When licensing import, import management agencies should take into account the desirability of issuing licenses for products in economic quantity and in compatibility with normal trading practice.

9. When licensing import, import management agencies need to formulate the procedures for considering applicants' past import performance as well as their achievements recorded in implementing the granted import licenses in the most recent period (2 years at most). In cases where such import licenses have not yet been fulfilled, import management agencies shall investigate into the reasons therefor so as to consider the grant of new licenses. Import management agencies shall also have to consider current principles and regulations and practical trading of concerned commodity lines so as to allocate quotas and grant import licenses to new importers in a reasonable manner.

10. In cases where import quotas administered through licenses are not allocated among supplying countries, licensed holders shall have the right to select supplying sources. If import quotas are allocated among supplying countries, the import licenses shall be clearly inscribed with country(ies) from which the licensed holders may import goods into Vietnam.

Chapter III

IMPLEMENTATION PROVISIONS

Article 6. Implementation organization

1. The Ministries of Industry; Agriculture and Rural Development; Fisheries; Culture and Information; Health; Post and Telematics; and Finance, the State Bank of Vietnam, the General Department of Customs and other State agencies with import licensing competence shall have to supply relevant information to, and coordinate with the Ministry of Trade in supervising the implementation of this Regulation.

2. The Ministry of Trade shall supervise and sum up the situation of implementation of this Regulation by concerned ministries and branches; report to the Prime Minister for handling cases of guidance and implementation in contravention of this Regulation as well as matters falling beyond competence of concerned ministries and branches; and act as coordinating body supplying information on import licensing to the Committee for Import Licensing of the World Trade Organization (WTO) and WTO member countries in accordance with the obligations prescribed in the WTO Agreement on Import Licensing Procedures once Vietnam becomes member of this organization.

FOR THE PRIME MINISTER

DEPUTY PRIME MINISTER

(Signed and sealed)

Vu Khoan

(This translation is for reference only)