

REPLIES TO QUESTIONNAIRE ON IMPORT LICENSING PROCEDURES¹

Notification under Article 7.3 of the Agreement on
Import Licensing Procedures

TONGA

The following communication, dated 31 March 2011, is being circulated at the request of the delegation of Tonga.

Outline of systems

1. The Business Licensing system aims to facilitate business development by levelling the "playing field" for investment through legislative enforcements of all trading businesses in the country. It also operates as a final stamp to ensure business compliance with ancillary legislations so as to safeguard the health and safety of consumers and the general public.

Importation is considered under Schedule 2 of the Business Licence Regulations 2007 as a business activity and therefore requires all businesses which undertake importation activities to hold a valid import business licence.

Purposes and coverage of licensing

2. Import Business Licensing covers all product types except products which breach the Consumer Protection Act 2000 and Consumer Protection Regulations 2006. A single Import Business Licence can be utilized to permit the importation of all product types relevant to the business activities registered under the venture in the Business Licence Registry given that they meet the conditions prescribed in the Business Licence Regulations 2007 Schedule 3A.

3. The system applies to all goods regardless of their originating country.

4. The Import Business Licensing is not in any means intended to restrict the quantity or value of imports but rather to enforce compliance of all importing businesses to relevant ancillary legislations including the Consumer Protection Act 2000 so as to protect the health and safety of the general public.

Prior efforts to streamline the general licensing system have recommended the strengthening of line ancillary legislative enforcements as an alternative to import business licensing. However, given the role of business licensing in facilitating business development, by creating a levelled

¹ See document G/LIC/3, Annex, for the questionnaire.

playing field for investment, and safeguarding the health and safety of the general public, the recommended repeal of the business licensing system, including import licensing, was denied by Government in consideration of the consequent threat to the general public and to investment. The recommendation was to be reconsidered at a later stage when existing loopholes in the current licensing legislative system and limitations in the enforcement capacity of line legislation are resolved. The recommendation was to be reconsidered at a later stage.

5. Import Business Licensing is stipulated under the Business Licence Regulations 2007 Schedule 2 and subjected to conditions provided in Schedule 3A. The Business Licence Act requires the licensing of all business activities listed in Schedule 2 of the Business Licence Regulations, including importations, but does not subject any imported product to administrative discretion. Abolishment of the import licensing system by deletion of importation from the list of business activities in Schedule 2 is subject to the approval of Cabinet and does not require legislative approval. Business activities provided in Schedule 2, including importation.

Procedures

6. N/A.

7. Where there is no quantitative limit on importation of a product or on imports from a particular country

(a) The Import Business Licence, such as any other Business Licence, is an annual licence and is renewed every year prior to the expiry date of 31st December of the year next following the renewal date.

Businesses which inadvertently import goods without an import licence can promptly obtain an import licence upon lodging the required application with the Business Licensing Unit of the Ministry.

(b) Upon application, import business licences can be issued within the timeframe of seven working days given that all application requirements are completed.

(c) Applications for import business licences can be lodged during any working day. Renewal applications however are to be lodged at least 30 days prior to the expiry of the licence.

(d) The import business licence is not subject to any sector specific requirements and is therefore effected by the approval of the Business Licensing Officer. However, the importer must hold auxiliary business licences for the distribution or processing of the imported products. These auxiliary business licences would be subject to sector specific requirements as stipulated under the Business Licence Regulations Amendment 2010.

8. As provided under the Business Licence Act 2002 Section 8, applications for import licence may be refused if the application contravenes Section 5 of the Act hence involve a prohibited activity, the applicant is under 18 years of age or involve a partnership where one of the partners is under 18 years of age, or the applicant is a foreign investor who does not hold a valid foreign investment registered certificate.

Upon application, the applicant will be advised to consider the above stated grounds for refusal and will be required to provide the requirements necessary for the approval of their business licence applications, as provided under the Business Licence Regulations Amendment 2010. A right of appeal against refusal of an application is not provided in the Legislations as all complete applications are appraised and approved.

Eligibility of importers to apply for licence

9. All persons, firms and institutions are eligible to apply for licences.

Documentational and other requirements for application for licence

10. Refer to Form 1 and Form 3 provided under the Business Licence Regulations 2007.
11. Documents required upon actual importation are subject to the Customs Department.
12. Fee for new applications is TOP\$ 120 and for renewal applications is TOP\$ 100.
13. There is no deposit or advance payment requirement associated with the issue of licences.

Conditions of licensing

14. As provided under the Business Licence Act 2002 Section 10, a business licence is valid for the period ending on 31st December next following the issue date and can be renewed upon payment of renewal application fee and submission of renewal application form prior to the expiry date of the business licence.
15. There is no penalty for the non-utilization of a licence or a portion of a licence.
16. As provided under Section 13 of the Business Licence Act 2002, business licences are non-transferable.
17. All Import Business Licences are subject to the below listed conditions as provided under Schedule 3 of the Business Licence Regulations 2007, namely:
 - No goods imported under this licence shall:
 - i. Be counterfeit in nature;
 - ii. Contain labelling that is false, misleading or deceptive as to the nature or character of such goods;
 - iii. Be described or presented on any label by words, pictorial or other devices which refer to or are suggestive of any other goods which such goods may be confused with.

Other procedural requirements

18. There are no other administrative procedures, apart from import licensing and similar administrative procedures, required prior to importation.
 19. Foreign exchange is subject to banking authorities and the compliance of the importer with their policies.
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