



ASEAN CUSTOMS TRANSIT SYSTEM (ACTS)

Conditions for Authorised Transit Traders (ATT)



ACTS | ASEAN CUSTOMS
TRANSIT SYSTEM



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one identity
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1. Background of the ACTS

- 1.1 The ASEAN Customs Transit System (ACTS) is a harmonised system for the control of the movement of goods in transit through ASEAN Member States. It replaces the traditional paper based controls with electronic processing of data and messages that contain the information required for the transit procedure. This provides for a more efficient transit system; that facilitates trade at the same time reducing the risk of improper use of the transit system, the loss of goods and the prevention of revenue leakage.
- 1.2 Under the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) signed on 16 December 1998 in Ha Noi, Viet Nam, the Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of South East Asian Nations (ASEAN) agreed, as Protocol 7, to establish the ACTS and to apply the provisions of this Protocol to the transit of goods in their territories.
- 1.3 Protocol 7 to AFAFGIT and its Technical Appendix establish the legal and technical provisions for the operation of ACTS to operate as an effective and efficient Customs transit system within ASEAN Member States.
- 1.4 These provisions are in line with international standards as recommended in the World Customs Organization Revised Kyoto Convention (RKC) and the World Trade Organization Trade Facilitation Agreement (TFA). Chapter 1 of the RKC under Specific Annex E provides the recommended standards for the facilitation of transit goods under Customs control and the requisite security and Customs guarantees. It also includes the standards concerning responsible persons, authorised consignors and consignees, the formalities at the office of departure, Customs seals and the time limit for transit.
- 1.5 The World Trade Organization Trade Facilitation Agreement includes a specific article on freedom of transit, and strengthens the key principle of freedom of transit as defined by Article V of the General Agreement on Tariffs and Trade (GATT). Article 11 introduces transit measures that have minimum documentation requirements and formalities, and the requirements for transit guarantees.
- 1.6 The TFA and the RKC both encourage the development of cooperation agreements that facilitate transit operations. This provides for the harmonization of Customs transit procedures, the exchange of information and common IT transit systems. The RKC recommends that Contracting Parties consider the possibility of acceding to international agreements relating to Customs transit.

2. The definition of an Authorised Transit Trader (ATT)

Under the ASEAN Customs Transit System (ACTS) an Authorised Transit Trader (ATT) is a trader who has been granted certain concessions (also called 'simplifications') to facilitate their transit operations.

3. Applicants for ATT status

3.1 Anyone involved in regional transit can apply for ATT status irrespective of the size of your business. This includes logistics operators, carriers, freight forwarders and Customs agents. You may apply if you fall into one or more than one of the following categories:

- Manufacturers / Exporters;
- Freight forwarders - organising the transport of goods on behalf of an exporter, importer or other party;
- Customs agents - a Customs representative acting on behalf of a person who is involved in Customs related business activities (direct representative) or in his own name (indirect representative);
- Carriers - person who actually transports the goods or is in charge of or responsible for the operation of the means of transport;
- Importers - an operator on whose behalf an import declaration is made and who at the time the declaration was accepted is the owner/consignee of goods or if not the owner is responsible for the control of the goods. This list is not exhaustive.

3.2 As a minimum requirement, traders must satisfy the Customs authorities that they have sufficient experience and resources to qualify for a simplification. Applicants will also need to show that they have the risk management standards, financial resources and internal computerised management systems appropriate to the level of authorisation.

3.3 In addition, traders need to be able to connect electronically with the Customs office of departure to make declarations.

4. ATT simplifications

4.1 An ATT is qualified to apply for reductions in the amount of guarantee required, or a waiver¹ from having to provide a guarantee.

4.2 Authorised Transit Traders can also apply for other simplified procedures including:

- Authorisation to commence a transit operation without physically presenting the goods and means of transport to the customs office of departure;
- Authorisation to unload and to end a transit operation at destination without physically presenting the goods and means of transport to the customs office of destination;

¹ Guarantee waivers are not permitted in Malaysia

- The use of company seals on the vehicle and packages;
- An exemption from having to follow prescribed itineraries.

4.3 In addition to concessions on the amount of guarantee, ATT applicants can seek approval for use of other ACTS simplified provisions, either separately, or combined in a manner to best facilitate the applicant's business operations.

- Application may be made for authorisation through a nominated Customs office of departure, or several offices if relevant, to permit transit movements to commence from one or more nominated and pre-approved authorised locations;
- Similarly, in a country of destination, an application may be made for Customs approval to receive and unload goods at the end of a transit movement, again at pre-approved authorised locations. An authorisation may specify further conditions to be met to properly end the transit operation;
- An Authorised Transit Trader who both dispatches and receives transit goods can apply for both departure and destination authorisations within the country where application is made;
- Security seals must be affixed to vehicles and packages for the transit; however company seals can be used and applied at the place of loading, subject to prior approval of the type of seal and notification of seal identity numbers.

5. Compliance

5.1 Customs will examine the trader's record of compliance with Customs and tax requirements over the last five years preceding the date of an application for ATT, including:

- Customs duty;
- Excise duty;
- VAT / sales tax / GST;
- Corporation Tax.

5.2 Trader's compliance will be judged on the basis of records and information that are available, if the traders have been established for less than five years.

5.3 Customs will assess whether a serious infringement or repeated infringements of Customs rules have been committed by any of the following persons:

- the applicant, and;
- any other responsible person involved in the running of the business.

5.4 Customs will take into account any Customs authorisations that have been withdrawn or revoked and the reasons for that withdrawal/revocation.

5.5 Traders will also need to demonstrate that they have:

- procedures in place to identify and disclose any irregularities or errors to Customs or, where appropriate, other regulatory bodies; and
- taken the appropriate remedial action when irregularities or errors are identified.

5.6 Treatment of errors

5.6.1 Customs recognise that all businesses can make errors. If you have made errors over the past five years in your Customs or tax affairs and Customs consider those errors to be of a technical nature being of negligible importance and having no significant impact on the operation of Customs rules, your record of compliance with Customs matters or tax requirements can be considered satisfactory.

5.6.2 In making this assessment, Customs will take into account the frequency of any errors, whether they are material in relation to the size of the business, whether they were made in good faith and whether any intent or negligence is involved.

5.7 Errors seen as having ‘no significant impact’

It is not possible to give definitive information on what types of errors would be considered as having no significant impact on the Customs rules as circumstances differ from case to case but the following examples would not normally count against an application:

- any errors that have been voluntarily disclosed;
- any decisions which have been overturned by tribunal or departmental review;
- any decisions currently under review;
- one-off debts incurred for non-compliance with a condition or obligation of authorisation, or;
- Where a civil penalty has been issued for a minor irregularity.

5.8 Repeated errors

Once an error has been identified, you will have been expected to take steps to ensure that they do not happen again or, at least, to ensure that they are immediately remedied if they do arise. Failure to take such steps could count against your application.

5.9 The responsible persons involved in the running of the business

Besides assessing the compliance of the business itself, Customs may also look at the previous compliance records of the following persons:

- company directors;
- the company secretary;
- solicitors and lawyers directly employed by the applicant, and;
- those directly responsible for the import/export of goods.

5.10 Errors made by agents

Any errors made by third parties acting on your behalf reflect upon you. It is important that any third parties that do act on your behalf are aware of the standards that you operate to, that they are given clear instructions and that systems are in place so that any problems are immediately identified.

6. Managing commercial and transport records

This section tells you about the conditions you must meet and the tests that Customs will carry out to ensure that you comply with the record keeping criteria of ATT.

6.1 Customs decisions whether trader's management and record keeping systems are satisfactory

Customs will look at your business and, having taken into account various factors (such as size and complexity of the business, what simplifications are being applied for and if any Customs authorisations are currently held), establish if you have a satisfactory system of managing commercial and, where appropriate, transport records.

6.2 Records Customs will be expecting to see

In order to satisfy Customs that you have a satisfactory system, you will need to:

- maintain an accounting system which is consistent with generally accepted accounting principles and which provides a full audit trail of your Customs activities which facilitate audit-based Customs control;
- allow Customs physical or electronic access to your Customs and, where appropriate, transport records;
- have an administrative organisation which corresponds to the type and size of business and documented procedures to control and manage the flow of goods;
- have internal controls capable of detecting illegal or irregular transactions;
- have satisfactory procedures in place to archive and retrieve your records and information, and also for protection against the loss of information;
- ensure that employees are made aware of the need to inform the Customs authorities whenever compliance difficulties are discovered and establish suitable contacts to inform the Customs authorities of such occurrences;
- where appropriate, have satisfactory procedures for verifying the accuracy of Customs declarations submitted on your behalf by third parties;
- have appropriate information technology security measures in place to protect your computer system from unauthorised intrusion and to secure your documentation.

7. Financial solvency

This section tells you about the conditions you must meet and the tests that Customs will carry out to ensure that you comply with the financial solvency criteria of ATT.

7.1 ATT solvency requirements

7.1.1 The solvency requirements can be met if you can prove you have been solvent for the five years preceding the date of application.

7.1.2 In the context of ATT, solvency is defined as good financial standing which is sufficient to fulfil the commitments of the applicant with due regard to the characteristics of the type of business involved.

7.2 Customs decisions on whether traders satisfy the requirement for financial solvency

Solvency will be assessed by analysing your ability to pay your legal debts. This includes any debts you owe to Customs or any other third party. This will be done by checking:

- you are not listed currently as in insolvency, administration, liquidation, bankruptcy or receivership;
- Customs have not taken legal proceedings against you to recover Customs debts in the last five years;
- you have not had a claim against your Customs guarantees (if any) in the last five years;
- whether you are late in paying money that is legally due to Customs in the last five years. This does not include amounts that are not yet legally due or are under appeal.

7.3 Records Customs will examine

7.3.1 Customs will rely on your full sets of annual accounts due in the last five years to establish whether you are able to pay your legal debts to third parties. In particular Customs will take into account:

- where required by company law, that the accounts have been filed with national authorities within the time limits laid down within the law;
- if you are a company, any audit qualifications or comments in the filed annual accounts about the continuation of the business as a going concern by, for example, the auditors or directors;
- any contingent liabilities or provisions;
- the net current assets are positive;
- the net assets position and the extent of intangible assets are included.

7.3.2 Customs recognise in some circumstances it may be normal practice for a company to have negative net assets. For example, a company may be set up by a parent company for research and development purposes when the liabilities are funded by a loan from the parent or from a financial institution. In these circumstances, negative net assets will not necessarily be seen as an indicator that a business is unable to pay their legal debts but further evidence of solvency will be required such as:

- a letter of undertaking from the lender;
- a bank facilities letter;
- if you are a sole proprietor or partnership, a list of any personal assets that are used to support the solvency of the business.

7.4 New business – proving solvency

7.4.1 If you are a newly established business or have just started trading, your financial solvency will be judged on the basis of records and information that are available at the time of application. This will include the latest:

- cash flow figures;
- balance sheet;
- profit and loss forecasts approved by the directors/partners/sole proprietor.

7.4.2 If your business is financed by a loan from another company or by a financial institution, Customs will require a copy of your business case and the bank facilities letter and evidence that you are operating within your approved overdraft facility.

7.5 Records Customs will expect to see

In order to satisfy Customs that you have a satisfactory system, you will need to:

- maintain an accounting system which is consistent with generally accepted accounting principles and which provides a full audit trail of your Customs activities which facilitate audit-based Customs control;
- allow Customs physical or electronic access to your Customs and, where appropriate, transport records;
- have an administrative organisation which corresponds to the type and size of business and documented procedures to control and manage the flow of goods;
- have internal controls capable of detecting illegal or irregular transactions;
- have satisfactory procedures in place to archive and retrieve your records and information, and also for protection against the loss of information;
- ensure that employees are made aware of the need to inform the Customs authorities whenever compliance difficulties are discovered and establish suitable contacts to inform the Customs authorities of such occurrences;
- where appropriate, have satisfactory procedures for verifying the accuracy of Customs declarations submitted on your behalf by third parties;
- have appropriate information technology security measures in place to protect your computer system from unauthorised intrusion and to secure your documentation.

8. Customs decisions on whether traders are compliant in respect of security and safety standards

8.1 Customs will consider your internal controls and measures to secure the safety of your business and your supply chain. These controls and measures are in addition to legal health and safety requirements as well as any specific legal requirements that may be applicable to your business.

8.2 Controls and measures that should be in place

In order to satisfy the requirements of ATT certification, you will need to show that:

- you or a qualified third party have carried out a safety and security assessment of your business;
- the external boundaries (walls, fences, etc.) of your business are appropriately secure and you have documented procedures to control access to your premises for authorised persons while at the same time having procedures for dealing with unauthorised access;
- measures are in place to protect your cargo units and to prevent the introduction, exchange or loss of any material or tampering with those units;
- appropriate access controls are in place to prevent unauthorised access to shipping areas, loading docks and cargo areas both on arrival and despatch;

- you have appropriate procedures to secure the safety of your goods during storage or manufacture;
- there are appropriate procedures in place to ensure the safety and security of your goods during transport, including where transport is sub-contracted to a third party;
- you have agreed appropriate safety and security measures with your suppliers;
- procedures are in place to carry out security screening on prospective employees working in security sensitive positions and appropriate security procedures are in place for any contracted parties that have access to your premises;
- you provide your staff with training on safety and security requirements.

8.3 Showing that these controls/measures are in place

You must be able to produce documentation showing the measures and controls put in place and this documentation will be verified during the course of the Customs ATT audit. This should include a risk and safety and security assessment which should be available and understood by all relevant staff. In addition to documentary evidence, the visiting audit officer will need to see practical examples of the systems working.

8.4 Persons responsible for carrying out a safety and security self-assessment review

- 8.4.1 A self-assessment should be carried out by a person with extensive knowledge of the risks and threats applicable to your type of business. This may be an independent third party or someone within the business but they must be considered competent to carry out the assessment.
- 8.4.2 The assessment itself will have resulted in a detailed report with all risks and threats highlighted. The content of the report will vary from business to business but it will be expected to contain details of the appropriate areas identified in paragraph 7.2 and the measures taken to address the identified risks.

9. Screening by traders of prospective staff

- 9.1 All staff that work in sensitive areas within a business should be subject to some form of pre-employment screening to provide assurance as to their trustworthiness, integrity and reliability.
- 9.2 The methods of screening may vary according to the level of risk but they should as a minimum:
- verify identity;
 - confirm the right to work in ASEAN;
 - Confirm the employee has declared any unspent criminal records;
 - check previous employment history.
- 9.3 All ATT applicants should have a documented employment history of their staff. It is suggested that this history should cover the previous five years but this period is not mandatory.

10. The ATT certificate

The central site will officially inform you of the outcome of your application. This decision should be with you within 90 days of the date on which your application was submitted but, in certain circumstances, this period may have to be extended.

11. Maintaining your ATT status

11.1 This section tells you what you must do, once you have obtained ATT status, to ensure that you maintain your eligibility to ATT certification.

11.2 It is your responsibility to ensure that you maintain the appropriate standards.

11.3 Notification of changes to business details

11.3.1 You must notify us of all changes that may affect your ATT status. This includes:

- changes to your legal entity;
- change of business name;
- your business address;
- the nature and structure of your business;
- changes to the senior personnel responsible for Customs matters listed in your application/questionnaire;
- changes to your accounting or computer systems;
- additions or deletions of locations or branches involved in the international supply chain;
- additions or deletions to the categories you have been approved for, that is, manufacturer/exporter etc.

11.3.2 You should notify Customs as soon as the change is known or, at the latest, within 14 calendar days of the change taking place.

11.3.3 If your legal entity changes, you may need to reapply for ATT status in the name of the new legal entity. Customs will advise you if a new application and questionnaire are required.

11.4 Notification of errors to Customs

11.4.1 If you make Customs errors, they must be reported to your local supervising office or, if you do not hold a Customs authorisation, errors should be notified to Customs.

11.4.2 Errors that are voluntarily disclosed will not impact on your ATT certificate provided you have:

- examined the reasons for the errors;
- taken the appropriate remedial action to prevent a recurrence.

11.5 Customs reviews of ATT authorisations

11.5.1 Customs will review your ATT status periodically to ensure you continue to meet the conditions and standards of the ATT status. Although your certificate has no expiry date, it will only remain valid for as long as you meet the conditions of certification. It is recommended that you continue to self-assess your compliance with the conditions of certification and action any identified problems as soon as they arise.

11.5.2 Customs will also review your status if there are major changes to the relevant Customs legislation.

11.6 Customs suspension of a trader's ATT status

11.6.1 Customs (or the issuing Customs authority in another Member State) may suspend your ATT certificate in any of the following cases:

- Where Customs have sufficient reason to believe that an act liable to give rise to criminal court proceedings and linked to an infringement of Customs rules has been perpetrated;
- Where non-compliance with the conditions or criteria for the certificate has been detected and no remedial steps have been taken within 30 days of the non-compliance arising. In certain circumstances, this period can be extended provided that Customs are satisfied that the difficulties can be overcome within a reasonable period.

11.6.2 You will be contacted prior to any decision to suspend your authorisation being made. Any decision taken will be subject to your right of appeal.

11.6.3 You can also request that your certificate is suspended if you discover irregularities and need time to correct the situation. Customs will agree a period of suspension with you in order to address the problem. If necessary, this period can be extended provided that Customs are satisfied that the difficulties can be overcome within a reasonable period.

11.6.4 When Customs are satisfied that the problems affecting your certification have been satisfactorily resolved, Customs will write to you advising that the suspension has been withdrawn.

11.6.5 If your certificate is suspended part-way through a Customs procedure, that procedure will be allowed to continue to its conclusion but no new procedure can be started after the suspension has been notified.

11.7 Customs revocation of a trader's ATT status

11.7.1 In the following circumstances, your certificate will be revoked:

- where your certificate has already been suspended and you fail to take the necessary remedial action to have the suspension withdrawn;
- where you have committed serious infringements relating to Customs rules and you do not have any further right of appeal;
- where you requested that your certificate is suspended and you fail to take the necessary remedial action to have the suspension withdrawn;
- where you request that the certificate is revoked.

11.7.2 The decision to revoke your ATT certificate will be notified to other ASEAN Member States. You will be contacted prior to any decision to revoke your authorisation being made. Any decision taken will be subject to your right of appeal. Revocation will apply from the day following you being notified.

11.8 Effects on other Customs authorisations if a trader's ATT certificate is suspended or revoked

If your ATT certificate is withdrawn, you will not automatically lose any authorisation(s) (for example, Customs warehousing) that you hold at that time. However, the Customs office supervising any authorisations you may hold will be informed of the withdrawal of your ATT certificate. The supervising office will look at the reason(s) for the withdrawal of the certificate and consider whether or not the non-compliance impacts upon your ability to continue to hold the authorisation(s).

11.9 Disagreeing with a Customs decision

If you do not agree with any decision issued to you there are two options available. Within 30 days of the date of the decision you can either:

- send new information or arguments to the decision maker;
- request a review of the decision by someone not involved in making the disputed decision.



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