

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade in Industrial Products

GROUP 4 ON LICENSING

Report by the Chairman

1. Pursuant to its mandate to elaborate on an ad referendum basis concrete solutions within the area of problems explored by Working Group 4, commencing with the operation of licensing systems, the Group submits to the Committee two drafts, one on automatic licensing (Annex I) and one on licensing to administer import restrictions (Annex II). It was agreed that these two texts should be accompanied by this cover note when circulated to administrations. The Group considered that the two texts, if accepted and implemented, could solve the specific problems notified in the inventory and contribute in this field to the objectives of minimizing the incidence and complexity of import formalities.

2. As regards automatic licensing, the Group has reached a fair measure of agreement¹ with the exception of paragraph 2 which contains two alternatives. The Group recommends that administrations should closely examine these two alternatives with a view to finding in due course a mutually acceptable solution.

3. As regards licensing to administer import restrictions, the Group's approach basing itself on the existing relevant provisions of the General Agreement notably of Article XIII, has been to concentrate on developing a text, the main intent of which is to minimize the additional restrictive effects arising in some cases from licensing procedures to administer import restrictions and particularly to facilitate the full and efficient utilization of quotas administered through licensing systems.

4. In both texts, bracketed paragraphs (paragraph 4 of Annex I and paragraph 1 of Annex II) relate to questions of discrimination between sources of imports in the design or operation of licensing systems. Some delegations noted that the problem of discrimination arose in a number of other non-tariff barrier subjects and expressed the view that this question should be examined in a wider context and that therefore the inclusion of these paragraphs was not appropriate. Other delegations while recognizing the necessity of such an examination in a wider context considered that this did not preclude inserting in the texts the paragraphs proposed to deal with the question of discrimination. These delegations considered that the paragraphs constituted an essential part of the texts in view of the fact that the principle of non-discrimination is basic to GATT.

¹Some delegations accepted the text of paragraph 6 of Annex I on the understanding that, where strictly indispensable, certificates of origin could be required on actual importation.

5. The Group has not considered in depth such questions as the legal status of the texts, their relationship to existing rights and obligations or the necessity to devise appropriate consultation and other implementation machinery. In a preliminary exchange of views, some delegations considered that it was within the terms of reference of the Group to make recommendations on the legal status to be given to the texts prepared, while others expressed the view that this matter should be left to the Committee on Trade in Industrial Products, or other higher bodies of the CONTRACTING PARTIES. No recommendation on these questions was formulated by the Group.
6. The Group considered that, in view of the progress made on the two texts, it would now be appropriate to refer them to administrations for careful examination and for consideration of implications arising from their acceptance, having regard to the fact that in some cases changes in legislation might be involved.
7. The Group noted the decision of the Council at its meeting on 21 April 1971 that Group 4 when dealing with licensing would consider licensing systems as measures of general application subject to the right of the Agriculture Committee to review the applicability to the agricultural sector of any solutions evolved.
8. In its work on licensing, the Group noted proposals made by developing countries that quantitative restrictions affecting their export trade should be removed by a fixed target date, if necessary on a preferential basis, and that pending their total elimination, allocation of quotas to them should be improved. Inter alia it was pointed out that distribution of global quotas among supplying countries on the basis of imports during the previous representative period in accordance with paragraph 2(d) of Article XIII posed special problems to new exporting countries and it was suggested that this criterion should be revised to ensure adequate share of the quota to the new entrant. It was also proposed that where imports were subject to quotas, such quotas should not apply to imports of products intended for re-export. The requests of developing countries concerning these problems will receive special attention when the Group addresses itself to the problem of quantitative restrictions.

ANNEX I

Automatic Import Licensing

1. Automatic import licensing is defined as licensing which is **not** used to administer import restrictions such as those employed pursuant to the relevant provisions of the General Agreement of inter alia articles XI, XII, XVII, XVIII, XIX, XX and XXI of the General Agreement and when foreign exchange is granted automatically. The term "automatic licensing" covers technical visa requirements, surveillance systems, exchange formalities related to imports, and other administrative reviews of an equivalent kind effected as a prior condition for entry of imports.

2. Alternative I

Automatic licensing systems, where required, shall not be used to restrict imports. Such systems shall be governed by the provisions of the General Agreement, in particular Article VIII, and be subject to the provisions set out in paragraphs 3-10 below.

Alternative II

No automatic licensing shall be required for the importation of goods after However, during the interim period, in special cases justified by the need to carry out certain administrative controls which could not be made in a more appropriate way, a system of automatic licensing may be applied subject to the following provisions.

3. The rules governing presentation of applications for automatic licences and the lists of products subject to automatic licensing shall be published, with a specific indication as to the purpose and character of the system and in such a manner as to

enable governments and traders to become acquainted with them. Any changes in either the rules governing automatic licensing or the lists of products subject to automatic licensing shall also be promptly published in the same manner.

4. Automatic licensing systems shall not be designed nor operated in such a manner as to discriminate between sources of imports.]

5. All persons, firms and institutions which fulfil the legal requirements for engaging in import operations involving products subject to automatic licensing shall be equally eligible to apply for and to obtain licences.

6. Application forms shall be as simple as possible. No document shall be required on application other than a pro forma invoice or, where strictly indispensable, other documents necessary to determine the nature and composition of the product.

7. No application shall be refused for minor errors in documentation easily rectifiable.

8. The applicant shall have to approach only one administrative organ for a licence.

9. Applications for licences may be submitted at any time.

10. Applications for licences shall be granted immediately on receipt or if this is not administratively feasible within a maximum of five working days from the date of receipt of the application.

ANNEX II

Licensing to Administer Import Restrictions

Licensing procedures adopted and practices applied for the issue of licences for administration of import restrictions may, in some cases, have additional restrictive effects on imports. The following provisions shall accordingly apply when a licensing system is used for the administration of quotas and other import restrictions.

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1. Licensing systems to administer import restrictions shall not be designed nor operated in such a manner as to prohibit imports from certain sources or discriminate between sources of imports, unless otherwise permitted under the General Agreement.]

2. The foreign exchange necessary for the payment of imports subject to licensing shall, where required, be made available to import licence holders on the same basis as to importers of goods that do not require import licences.

Information and publication

3. All useful information concerning formalities for filing applications for licences shall be published by the government which imposes or maintains the licensing requirement, as far in advance as possible of any opening date for submission of applications for licences.

4. All relevant information shall be provided to governmental authorities, upon their request, concerning the administration of import restrictions, the import licences granted over a recent period, and the distribution of such licences among supplying countries, including wherever possible names of importing enterprises on a confidential basis.

5. In the case of licences for import restrictions involving fixed quotas the overall amount of quotas, by quantity or value, including revisions during the quota period, of goods that could be imported during that specified period, dates of opening of quotas and, where applicable, the amount allocated by country, shall be published.

Procedure for licence applications and distribution of licences

6. Any person, firm or institution which fulfils the legal requirements shall, to the extent possible, having regard to the provisions of paragraph 14 below, be equally eligible to apply for licences and to get their applications considered accordingly.

7. A reasonable period shall be allowed for submission of applications for licences.

8. Application forms and procedures for application and, where applicable, renewal shall be as simple as possible.

9. The period for processing of applications shall be as short as possible.

10. In the event of refusal of an application, the applicant shall be given on request the reasons for such refusal and shall have the right of appeal.

11. The validity of the licence shall be of reasonable duration, and in no case, except in special cases where imports are necessary to meet unforeseen short-term requirements, so short as to prevent imports from countries situated at a distance, taking into account transport and communications conditions.

12. When administering quotas, the authorities of the importing country shall take all possible steps to ensure that licences ~~will~~ be issued and importation can be effected within the period prescribed for this purpose and to facilitate the full utilization of the quotas.

13. The administrative authority issuing the licence shall take into account inter alia whether licences issued to the applicant in previous periods have been utilized or not.
14. Licences should not be issued to importers for goods in such small quantities as to make imports uneconomical and, so far as consistent with this, should not be allocated to an unduly small number of importers.
15. Consideration shall be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for goods in economic quantities.
16. In the case of quotas administered through licences which are not allocated among supplying countries, licence-holders shall be free to choose the sources of imports.
17. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries from which imports must be made.
18. Imports of goods under restrictions should, wherever practicable, be allowed on the basis of normal customs procedures, or in accordance with procedures worked out in agreement between exporting and importing countries, on the basis of export permits issued by the exporting countries.
19. Where export permits are issued by exporting countries according to a procedure worked out in common agreement with an importing country, but where the importing country for certain purposes requires import licences, the latter shall be issued automatically, within the limit of the quotas, in accordance where appropriate with the provisions of Annex I.