

GENERAL AGREEMENT ON
TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Quantitative Restrictions"

IMPORT LICENSING PROCEDURES

Note by the Secretariat

1. At its November 1977 meeting the Sub-Group "Quantitative Restrictions" requested the secretariat to establish a document which would contain a list of general points made, as well as revised version of the texts in MTN/NTM/W/103 and 111, taking account of specific proposals made by delegations (MTN/NTM/38, paragraph 9).
2. This note is circulated in response to this request and contains the following:
 - Annex I : General Points
 - Annex II : Automatic Import Licensing
 - Annex III : Licensing to Administer Import Restrictions.
3. The note has been prepared on the secretariat's responsibility and is intended to serve as a starting point for further negotiations and discussion. Neither its content nor the way in which the note has been presented commit any delegation.

ANNEX I

General Points

In the Sub-Group's discussion on import licensing procedures on 17 November 1977 the following general points were, inter alia, raised which relate to both the draft texts on Automatic Import Licensing and on Licensing to Administer Import Restrictions:

- Should the codes be self-contained legal instruments without any reference to the General Agreement or, if this were not the case, what should the relationship of non-contracting parties to the GATT be with regard to the codes.
- Should the notion of automatic licensing and that of licensing to administer import restrictions be more clearly defined in order to clarify the purpose and the scope of each of the draft texts.
- Should the question of export licensing be included in the work of the Sub-Group.
- Is differential and more favourable treatment for developing countries feasible and appropriate in the area of import licensing procedures and what contributions could these countries make in this area of the MTN.
- Should import licensing systems be permitted to discriminate between sources of imports.
- Should these systems be applicable to the importation of all products.

Among the problems relating only to Automatic Import Licensing were the following:

- Do automatic licensing systems serve a legitimate purpose or should these systems be phased out by a certain date.
- Do automatic licensing systems exist only for safeguard purposes or are there also other purposes for their maintenance.

On Licensing to Administer Import Restrictions, the following issues were raised inter alia:

- Should the title and text of the draft refer to import licensing procedures applied for purposes other than to administer import restrictions (e.g. for economic development purposes).
- Are discretionary licensing systems covered by the text.

ANNEX IIAutomatic Import Licensing

1. Automatic import licensing is defined as a system requiring the submission to the relevant authority prior to clearance of the products on application to import products, the approval of which and the necessary foreign exchange for which is automatically granted. /Examples of automatic licensing are presafeguards surveillance systems, documents required for the purpose of complying with formalities related to the provision of foreign exchange for imports where such provision would be automatically forthcoming, requirements relating to advance classification of goods for customs or health and safety purposes and other requirements of a similar kind effected as a prior condition for entry of products.//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. / Licensing systems used to administer import restrictions/such as those employed pursuant to the relevant provisions of, inter alia, Articles XI, XII, XVII, XVIII, XIX, XX and XXI of the General Agreement/is not covered by this text.]

Automatic import licensing is an administrative procedure, according to which licence requests are granted promptly through simple formalities, prior to entering of imports. This procedure, when applied, will not discourage or restrict imports, in particular those from developing countries.]

2. ~~Except~~ in a safeguard context no automatic licensing shall be required for the importation of goods after --- However, during the interim period ~~Automatic import licensing shall not be required as a general and permanent condition for the entry of any product described in Part I of the appropriate schedules to the General Agreement~~ ~~After~~ , the developed countries shall eliminate the system of licensing for import of goods originating from developing countries to which they applied the automatic licensing system ~~automatic licensing systems, where required, in special cases justified by the need to carry out certain administrative controls which could not be made in a more appropriate way~~ shall not be administered in a manner so as to have ~~trade~~ restricting effect ~~on imports~~ ~~and shall be removed as soon as the circumstances which gave rise to their introduction no longer prevail.~~ Such systems shall ~~be~~ governed by the provisions of the General Agreement, in particular Article VII and ~~be~~ subject to the following provisions:

3. The rules governing presentation of application for automatic licences and the lists of products subject to automatic licensing shall be promptly published ~~with a specific indication as to the purpose and character of the /requirement/ /system/~~ ~~and~~ ~~in~~ such a manner as to enable /governments and/ traders to become acquainted with them. ~~The~~

said rules and lists may be amended at any time without prior notice⁷. Any changes in either the rules governing automatic licensing or the list of products subject to automatic licensing shall also be promptly published ⁷in the same manner⁷.

⁷The rules governing presentation of application for automatic licences or changes thereto shall be notified annually to the GATT. Each contracting party shall also promptly notify any product for which an automatic licensing requirement is introduced or removed, as and when it is introduced or removed with a specific indication of the purpose and character of the licensing requirements.⁷

4. ⁷Automatic licensing system shall not be designed nor operated in such a manner as to discriminate between sources of imports.⁷

5. All persons, firms and institutions which fulfil the legal requirements ⁷of each country⁷ 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. ⁷No document/s/⁷ shall be required on application other than /a pro forma invoice/ /those required for normal customs purposes⁷. ⁷Together with the application a

pro forma invoice may be required or, where strictly indispensable, other documents necessary to determine the value, quantity nature and composition of the product.

7. No application shall be refused for minor errors /in documentation easily rectifiable //which do not alter basic data contained therein/.

No adherent shall impose substantial penalties, or refuse an application for minor errors of documentation easily rectifiable, or for minor breaches of procedural requirements. In particular, no penalty in respect of any omission, a mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

8. The applicant for a licence shall have to approach only one administrative competent organ previously specified in the applicable rules referred to in paragraph 3 above. If in exceptional cases some other organs are to be approached then their number should be limited as far as possible.

9. Applications for licences may be submitted at any time but before the date of no later than seven days after the placement of a firm order and in no event later than the date of shipment of any of the goods involved.

10. Applications for licences when submitted in appropriate and complete form shall be granted [to the extent administratively feasible] immediately on receipt [or] [within the shortest possible delay of time].

[11. Each contracting party shall, upon request, afford sympathetic consideration to and afford opportunity for prompt consultation with regard to any matter related to automatic import licensing. If no satisfactory solution of the matter has been reached within sixty days, the matter may be brought before the CONTRACTING PARTIES.]

ANNEX III

/Licensing to Administer Import Restrictions/

/1. Licensing procedures adopted and practices applied for the issue of licences for administration of quotas and other import restrictions /such as those employed pursuant to the relevant provisions of, inter alia, Articles XI, XII, XVII, XVIII, XIX and XXI of the General Agreement/ may, in some cases, have additional restrictive effects. The following provisions shall accordingly apply to such procedures and practices /without prejudice to the rights and obligations of the General Agreement/ /and taking into account the legitimate economic development purposes and financial needs of developing countries./

/2. 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.

3. The foreign exchange necessary to pay for imports subject to licensing shall /where required/ be made available to licence holders on the same basis as to importers of goods not requiring licences /or goods subject to automatic licensing/.

4. All useful information concerning procedures for filing licence applications and concerning the eligibility of persons, firms and institutions to make such applications shall be published by the government which imposes or maintains the licensing requirement issuing the licence as far in advance as possible of opening dates for submission of licence application.
5. Governments which impose or maintain the licensing requirements issuing licences shall provide, upon the request of an adherent to this code all relevant statistical information concerning the administration of the restrictions, the volume and/or value of licences granted in respect of the current quota period; statistics for the value and source of imports under quota, where possible prior to publication of such statistics, the import licences granted over a recent period and where applicable distribution of such licences among supplying countries and where applicable practicable the distribution among customs union members and, wherever agreed to by importing enterprises, the names of those enterprises. The developing countries would not be expected to take additional administrative or financial burdens on this account.

6. Governments which impose or maintain the licensing requirements issuing licences to administer fixed quotas shall as far as practicable publish the overall amount of quotas by quantity or value, opening and closing dates of quotas, where applicable, the amount allocated by country and revisions affecting the goods imported during the quota period as far as practicable and pursuant to what is laid down in paragraph 12.

7. Any person, firm or institution which fulfils the legal requirements of the importing country shall to the extent possible having regard to the provisions of paragraph 14 below be equally eligible to apply and be considered for a licence. If the licence application is refused, the applicant shall, on request be given the reasons for such refusal and shall have a right of appeal. In exceptional cases, e.g. in the interest of public security, the reasons may be withheld.

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

9. Application and, where applicable, renewal procedures shall be as simple as possible. Applicants shall have to approach only one administrative organ for a licence and shall be allowed a reasonable period to submit applications. If in exceptional cases some other organs are to be approached then their number should be limited as far as possible.

10. The period for processing of applications shall be as short as possible and applications with easily rectifiable errors shall not be refused and applications with errors which do not alter basic data contained therein shall not be refused.

11. The validity of the licence shall be of reasonable duration The period of licence validity shall allow suppliers to receive, process, ship and receive payment for imports and in no case so short as to preclude imports and shall not preclude imports from distant sources taking into account transport and communications conditions except in special cases where imports are necessary to meet unforeseen short-term requirements.

12. When administering quotas the authorities of the importing country governments issuing licences shall take all possible steps to ensure that nothing in the administration of the licensing system, in

particular the time of issuance of licences shall prevent importation, /
/licences will be issued and importation can be effected/ within the
period prescribed for this purpose /and to facilitate the full utiliza-
tion of the quotas/ /whether for reasons of economic policy, the
conditions under which the quotas under reference were established
remain in existence, in the opinion of the governments which established
those quotas./

13. Governments /which impose or maintain the licensing requirements/
/issuing licences/ /shall/ /may/ take into account inter alia whether
licences issued to the applicant in previous periods have been utilized
or not /for which purpose they may require the production of the
appropriate evidence/.

/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
/except in the case of developing countries who may want to keep socio-
economical objectives in view in allocating quotas./

15. /Consideration shall be given to ensuring/ /There shall be/ a
reasonable distribution of licences to new importers, taking into account
the desirability of issuing licences for goods in economic quantities

[and also the rights of traditional importers especially where quotas are applied for emergency protection purposes.]

[In the distribution of licences developed countries should reserve a substantial share to new importers, in the case of new products originating in developing countries; in addition, they should authorize a larger number of licences for traditional imports originating in developing countries.]

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 [with the exception of supplying countries with which no trade relations are maintained].

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/ /import permits issued by importing countries/ 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 /quotes/ /import restriction/, in accordance where appropriate with the provisions of Annex I.

20. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.