

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade NegotiationsGroup "Non-Tariff Measures"Sub-Group "Quantitative Restrictions"

IMPORT LICENSING PROCEDURES

The following text of a Draft Agreement on Import Licensing Procedures is circulated at the request of a number of delegations.

All proposals remain on the table. The circulation of this document does not prejudice the negotiating position of any delegation with regard to its contents or the right of any delegation to revert to specific issues.

The precise wording of some provisions in the text, particularly in the preambular and final provisions, will need to be examined further.

DRAFT AGREEMENT ON IMPORT LICENSING PROCEDURES

The adherents to the Agreement on Import Licensing Procedures, hereinafter referred to as "the Agreement",

Desiring to further the objectives of the General Agreement on Tariffs and Trade;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing requirements may be employed to administer measures adopted pursuant to, inter alia, Articles XI, XII, XIII, XVII, XVIII, XIX, XX and XXI;

Recognizing also that the inappropriate use of licensing requirements may impede the flow of international trade;

Desiring to simplify and bring transparency to the various procedures and administrative practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Taking into account the particular trade, development and financial needs of developing countries;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:

GENERAL PROVISIONS

1. For the purpose of this Agreement, import licensing is defined as administrative procedures (e.g., those referred to as "licensing" as well as other similar measures) requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing country.

2. The following provisions shall, together with the relevant provisions of the General Agreement^{1,2}, govern the operation of procedures which implement import licensing regimes with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing countries.

3. The rules for import licensing procedures shall be neutral in application and administered in an equitable manner.

4. The rules and all information concerning procedures for filing import license applications, including the eligibility of persons, firms and institutions to make such applications, and the lists of products subject to the licensing requirement shall be published promptly in

¹Including its annexes and protocols.

²The precise relationship of this Agreement with the General Agreement and other MTN Agreements to be reviewed further.

such a manner as to enable governments and traders to become acquainted with them. Any changes in either the rules concerning licensing procedures or the list of products subject to import licensing shall also be promptly published in the same manner. Copies of these publications shall also be made available to the GATT Secretariat.

5. Application forms and, where applicable, renewal forms shall be as simple as possible. [No documents shall be required on application other than [a pro forma invoice] [those required for normal customs entry purposes] [or, where strictly indispensable, other documents necessary to determine [inter alia,] the value, quantity, nature, composition, [origin and country of consignment] of the product.]]¹

6. Application and, where applicable, renewal procedures shall be as simple as possible. Applicants shall have to approach only one administrative body previously specified in the application rules referred to in paragraph 4 above to obtain a license and shall be allowed a reasonable period to submit applications. In cases where it is strictly indispensable that more than one administrative body is to be approached for approval of the license application, these shall be kept to the minimum number possible.

7. No application or form shall be refused for minor documentation errors which are easily rectifiable and which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

¹It is for consideration whether the information specified in the ECE Standard Invoice Layout Key (Annex II, MTN/NTM/W/116) would be appropriate with respect to the information requirements in the application forms.

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

9. The foreign exchange necessary to pay for licensed imports shall be made available to license holders on the same basis as to importers of goods not requiring import licenses.

Automatic Import Licensing

10. Automatic import licensing is defined as import licensing where approval of the application is freely granted.

11. The following provisions, in addition to those in Articles 1-10 above, shall apply to automatic import licensing procedures:

(a) Automatic licensing procedures shall not be administered in a manner so as to have restricting effects on imports subject to automatic licensing.

(b) Adherents recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail or as long as their underlying administrative purposes cannot be achieved in a more appropriate way.

(c) Any person, firm or institution which fulfils the legal requirements of the importing country for engaging

in import operations involving products subject to automatic licensing shall be equally eligible to apply for and to obtain import licenses.

(d) Applications for licenses may be submitted at any time prior to the customs clearance of the goods.

(e) Applications for licenses when submitted in appropriate and complete form shall be approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days.

Non-Automatic Import Licensing

12. The following provisions, in addition to those in Articles 1-9 above, shall apply to non-automatic import licensing procedures:

(a) Licensing procedures adopted and practices applied for the issue of licenses for administration of quotas and other import restrictions such as those employed pursuant to, inter alia, the relevant provisions of Articles XI, XII, XVII, XVIII, XIX, XX, and [XXI] of the General Agreement shall not have trade restrictive effects on imports additional to those caused by the imposition of the restriction.

(b) Governments shall provide, upon the request of an adherent to this Agreement having an interest in the trade of the product concerned, all relevant information regarding:

- (i) the administration of the restrictions;
- (ii) the import licenses granted over a recent period;
- (iii) the distribution of such licenses among

supplying countries;

- (iv) where practicable, the import statistics (i.e., value or volume) with respect to the products subject to import licensing.

[The developing countries would not be expected to take additional administrative or financial burdens on this account.]

(c) Governments administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity or value, the opening and closing dates of quotas, and any change thereof.

(d) In the case of quotas allocated among supplying countries, the adherent applying the restrictions shall promptly inform all other adherents having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

(e) Where there is a specific opening date for the submission of licensing applications, the rules and product lists referred to in paragraph 4 shall be published as far in advance as possible of such date, or immediately after the announcement of the quota or other measure involving an import licensing requirement.

(f) Any person, firm or institution which fulfils the legal requirements of the importing country shall be equally eligible to apply and be considered for a license. If the license application is refused, the applicant shall, on request, be given the reasons for such refusal and shall have a right of appeal in accordance with the domestic legislation of the importing country.

(g) The period for processing of applications shall be as short as possible.

(h) The period of license validity shall be of reasonable duration and not be so short as to preclude imports. The period of license validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements.

(i) When administering quotas, governments shall not prevent importation from being effected in accordance with the issued licenses, and shall not discourage the full utilization of the quotas.

(j) When issuing licenses, governments shall take into account the desirability of issuing licenses for goods in economic quantities.

(k) In allocating licenses, governments shall consider whether licenses issued to the applicant in previous periods have been utilized up to the amount provided for in the license.

(l) Consideration shall be given to ensuring a reasonable distribution of licenses to new importers, [especially those importing goods originating in developing countries and, in particular, the least developed countries], taking into account the desirability of issuing licenses for goods in economic quantities.

(m) In the case of quotas administered through licenses which are not allocated among supplying countries, license holders shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the license shall clearly stipulate the country or countries.

Institutions, Consultation and Dispute SettlementThe Committee on Import Licensing

13. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the adherents to this Agreement (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary for the purpose of affording adherents to this Agreement the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives.

14. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXII and XXIII of the General Agreement, as elaborated by (MTN Framework Agreement).¹

15. Final Provisions²Signature and Acceptance

(a) This Agreement shall be open for signature in Geneva, at the headquarters of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, from until by governments contracting parties to the General Agreement on Tariffs and Trade and by the European Economic Community. It shall also be open for signature by other governments undertaking to observe the provisions of this Agreement and such other provisions related to the effective

¹The precise relationship of this Agreement in the General Agreement and other MTN Agreements to be reviewed further.

²To be discussed and examined on the basis of similar texts in other MTN Agreements.

application of rights and obligations as may be agreed.

(b) This Agreement shall be accepted by each adherent only after fulfilment of its respective constitutional procedures.

(c) Contracting parties may adhere in respect of those territories for which they have international responsibility in accordance with the provisions of Article XXVI:5(a) and (b) of the GATT, provided that GATT is being applied in respect of such territories; and each such territory shall be treated as though it were an adherent.

Reservations

(d) Reservations may not be entered in respect of any of the provisions of this Agreement

Security Exceptions

(e) Nothing in this Agreement shall be construed

- (i) to require any adherent to furnish any information the disclosure of which it considers contrary to its essential security interest; or
- (ii) to prevent any adherent from taking any action which it considers necessary for the protection of its essential security interests
 - (aa) relating to fissionable materials or the materials from which they are derived;

- (bb) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
- (cc) taken in time of war or other emergency in international relations; or
- (iv) to prevent any adherent from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Confidentiality of Information

(f) The provisions of this Agreement shall not require any adherent to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Entry into Force

(g) This Agreement shall enter into force [on 1 January 1980] as among the parties which have accepted it. For each government which accepts thereafter, the Agreement shall enter into force on the thirtieth day following the date of such acceptance.

Accession

(h) Any government not an adherent to this Agreement may accede to it on terms to be agreed between that government

and the adherents to the Agreement.

(i) Accession shall take place through signature of a Protocol of Accession to be deposited with the Director-General to the CONTRACTING PARTIES to the GATT.

Review and Amendments

(j) The Committee shall review the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform the CONTRACTING PARTIES to GATT of developments during the periods covered by such reviews.

(k) Each adherent shall, after the date upon which the Agreement becomes effective for the adherent concerned, inform the Committee of measures in existence or taken to ensure the proper administration of the Code.

(l) The Committee may review the operation and implementation of this Agreement as necessary and, where appropriate, amend the text of the Agreement having regard, inter alia, to the experience gained in its implementation.

Withdrawal

(m) Any adherent may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of ninety days from the date on which the written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. The Director-General shall promptly inform each adherent. Any adherent may, upon receipt of such information, request an immediate meeting of the Committee.

Non-Application

(n) This Agreement shall not apply as between any adherent accepting this Agreement or government acceding thereto, if at the time of acceptance of the Agreement or or accession thereto, an adherent to the Agreement or the acceding government does not consent to such application.

Secretariat

(o) This Agreement shall be serviced by the GATT Secretariat.

Deposit

(p) This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof pursuant to paragraphs 15(a), (b), and (c) or of each accession thereto, pursuant to paragraphs 15(f) and (b), to each adherent to the Agreement.

Registration

(q) This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this day of,
nineteen hundred and seventy-eight, in a single copy, in the
English, French, and Spanish languages, each text being
authentic.