

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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COMMUNICATION FROM THE UNITED STATES

The following communication from the United States was received on 21 April 1988.

Submission by the United States on
Import Licensing Procedures

Further to previous United States submissions outlining views on possible improvements to the Agreement on Import Licensing Procedures, the United States delegation is providing the attached to demonstrate where the Agreement may be improved. These comments should be viewed as indicative and are the reflection of a number of views expressed by interested delegations during the course of consultations.

AGREEMENT ON IMPORT LICENSING

SUGGESTED ADDITIONAL CONCEPTS

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement on Import Licensing Procedures (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

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

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 may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;

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

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

-- Recognition that the unlimited use or expansion of non-automatic and otherwise discretionary import licensing may impede the flow of international trade.

-- Include reference to the desire to minimize or decrease, to the extent possible, the overall use of licensing, particularly non-automatic licensing.

-- Discretionary licensing should be degressive and consistent with appropriate GATT justifications and should not be maintained after the original purpose for adopting the measure no longer applies.

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

Hereby agree as follows:

Article 1. General provisions

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1. For the purpose of this Agreement, import licensing is defined as administrative procedures used for the operation of import licensing regimes 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 (NOTE: Footnote deleted for technical reasons only.)
 - Elaborate upon definitions or provide interpretive guidelines (from the review of Article 1.1 in the Licensing Committee).
2. The Parties shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of the GATT including its annexes and protocols, as interpreted by this Agreement, 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.
 - No licensing procedure shall be adopted or maintained without an accompanying GATT justification and notification.
3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.
 - Parties should inform the Committee through agreed established reporting procedures (to be spelled out in the Agreement itself) of the GATT justification for licensing practices, including the duration of the measure and the projected timetable for elimination.
4. The rules and all information concerning procedures for the submission of 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 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.
 - Insert Committee recommendation language regarding publication of rules and information concerning procedures for submission of applications, changes in rules or lists of products, the acceptable procedures on timing and the degree of transparency required for publication of information related to the administration of licensing.
5. Application forms and, where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application.
 - Insert Committee recommendation language regarding the timing for submission of licensing applications where there is a closing date and language relating to cases where it is strictly indispen-sable that more than one administrative body is to be approached in connection with an application.

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6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall have to approach only one administrative body previously specified in the rules referred to in paragraph 4 above in connection with an application and shall be allowed a reasonable period therefor. In cases where it is strictly indispensable that more than one administrative body is to be approached in connection with an application, these shall be kept to the minimum number possible.
 7. No application shall be refused for minor documentation errors 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.
 8. 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.
 9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.
 10. With regard to security exceptions, the provisions of Article XXI of the GATT apply.
 11. The provisions of this Agreement shall not require any party 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.
- Article 2. Automatic import licensing (NOTE: Footnote deleted for technical reasons only.)
1. Automatic import licensing is defined as import licensing where approval of the application is freely granted.

The following provisions in addition to those in paragraphs 1 to 11 of Article 1 and paragraph 1 of Article 2 above, shall apply to automatic import licensing procedures:
(NOTE: Footnote deleted for technical reasons only.)

ii Define more clearly the obligation to freely grant licenses.

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

(b) Parties 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 its underlying administrative purposes cannot be achieved in a more appropriate way;

(c) Any person, firm or institution which fulfills 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 licences;

(d) Applications for licences may be submitted on any working day prior to the customs clearance of the goods;

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

Article 3. Non-automatic import licensing

The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 above, shall apply to non-automatic import licensing procedures, that is, import licensing procedures not falling under paragraphs 1 and 2 of Article 2 above:

(a) Licensing procedures adopted, and practices applied, in connection with the issuance of licences for the administration of quotas and other import restrictions, shall not have trade restrictive effects on imports additional to those caused by the imposition of the restriction;

(b) Parties shall provide, upon the request of any party having an interest in the trade in the product concerned, all relevant information concerning:

(i) the administration of the restrictions;

-- Parties shall undertake procedures (to be spelled out in the Agreement itself) to gradually reduce and/or eliminate use of non-automatic licensing, through reduction in the duration or the scope of measures, wherever possible.

-- Parties recognize that trade restrictive effects are often intensified when there is a lack of transparency and certainty in the administration of non-automatic import licensing, particularly when zero quotas are administered in an arbitrary and capricious manner and where exceptions to prohibitions are not administered consistently with obligations outlined in GATT Article XIII.

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(iii) the import licences granted over a recent period;

(iv) the distribution of such licences among supplying countries;

(v) where practicable, import statistics (i.e. value and/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) Parties administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof;

(d) In the case of quotas allocated among supplying countries, the Party applying the restrictions shall promptly inform all other Parties 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 of Article 1 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 requirements;

(f) Any person, firm or institution which fulfills the legal requirements of the importing country shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reasons therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing country;

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

-- In the case of prohibitions, the following conditions or criteria under which exceptions may occur and procedures for publicizing and implementing these exceptions are to be undertaken: (to be elaborated in the agreement itself).

-- Insert from Committee recommendations language on publication of information referred to in Article 3(c) in such a manner as to enable governments and traders to become acquainted with them."

-- Insert from Committee recommendations language on acceptable time frames for publication of opening dates for submission of applications and publication of information on shares of a quota currently allocated, by quantity or value, among supplying countries referred to in Article 3(d), at least 21 days prior to the date applications are due. Include recommendations for cases where situations arise which make it necessary to provide for an early opening date of quotas.

-- Insert from Committee recommendations the language on the acceptable period for processing applications.

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

... Provide interpretive guidelines in text for "reasonable duration."

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

(j) When issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;

(k) In allocating licences, Parties should consider the import performance of the applicant, including whether licences issued to the applicant have been fully utilized, during a recent representative period;

(l) Consideration shall be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing countries and, in particular, the least-developed countries;

(m) 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. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries; (NOTE: Footnote deleted for technical reasons only.)

(n) In applying paragraph 8 of Article 1 above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

Article 4. Institutions, consultation and dispute settlement

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1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (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 Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

- Parties agree to undertake periodic reviews of all automatic and non-automatic licensing mechanisms to ensure the continued necessity of all licensing mechanisms.
 - Parties should report to the Committee on the results of these reviews, citing the rationale for maintenance of licensing.
 - The Committee shall develop, maintain and regularly review procedures for monitoring developments in each Party's licensing programs and for monitoring trends in licensing. This shall include, for example, provisions for cross notification and procedures to question or challenge the measures adopted and requirements for specific GATT justification related to each individual product subject to licensing.
 - Elaborate upon dispute procedures.
2. 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 GATT.

Article 5. Final provisions

1. Acceptance and accession

(a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

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(d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other parties.

3. Entry into force

This Agreement shall enter into force on 1 January 1980 for the governments which gave accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement. (NOTE: Footnote deleted for technical reasons only.)

4. National legislation

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

5. Review

The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement taking into account the objectives thereof and shall inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

6. Amendments

The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

7. Withdrawal

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Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

8. Non-application of this Agreement between particular parties

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

9. Secretariat

This Agreement shall be serviced by the GATT Secretariat.

10. Deposit

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 6, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 7 of this Article.

11. Registration

This Agreement shall be registered in accordance with the Provisions of Article 102 of the Charter of the United Nations.

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