

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/53/Rev.1

24 November 1989

Special Distribution

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Group of Negotiations on Goods (GATT)  
Negotiating Group on MTN  
Agreements and Arrangements

Original: English

COMMUNICATION FROM THE UNITED STATES AND HONG KONG

Revision

The attached revision of document MTN.GNG/NG8/W/53 dated 16 November 1989 was received by the secretariat with the request that it be circulated to members of the Group. It has also been submitted to the Committee on Import Licensing.

(As in the original document, the entire text of the Agreement is reproduced with proposed modifications underlined. The sections of the text that have been further revised are denoted by bold type.)

AGREEMENT ON IMPORT LICENSING PROCEDURES

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;

Desiring to ensure that import licensing is not utilized in a manner contrary to GATT principles and obligations;

Recognizing and reaffirming the provisions of Article XI of the General Agreement as they apply to import licensing;

Recognizing that the inappropriate or excessive use of import licensing procedures constitutes a particular impediment to the flow of international trade;

Convinced that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner;

Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;

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;

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 1.1

For the purpose of this Agreement, import licensing is defined as administrative procedures (footnote: Those procedures referred to as "licensing" as well as other similar administrative procedures) **used for the operation of import licensing régimes** 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.

#### Article 1.2

The Parties shall ensure that the administrative procedures used to implement import licensing régimes 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.

#### Article 1.3

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

#### Article 1.4: Based on Committee recommendation

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 in the sources notified to the secretariat at least twenty-one days prior to the specific opening date for the submission of applications, and 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 be published in the same manner, at least twenty-one days before the effective date of the change.

During this twenty-one-day period, Parties shall be provided the opportunity to make comments in writing and to discuss these comments upon request. The concerned Party shall give due consideration to these comments and results of discussions.

Notwithstanding the above, if situations arise which make it absolutely necessary to provide for an early opening date for the submission of licensing applications, the information referred to in sub-paragraph 1 shall be published and notified to the GATT secretariat immediately and in no case later than seven days after the announcement of the quota or other measure involving an import licensing requirement.

#### Article 1.5

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 régime may be required on application.

Article 1.6: Based on Committee Recommendation

Application procedures and, where applicable, renewal procedures shall be as simple as possible. Where there is a closing date for the submission of licensing applications, applicants should be allowed at least twenty-one days for making such submissions. However, this provision should not be interpreted as derogating from Article 3(5)(a), particularly in cases where insufficient amounts of applications have been received within this stipulated period. Applicants shall have to approach only one administrative body previously specified in the rules referred to in paragraph 1 of Article 1.4 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, applicants shall not need to approach more than two administrative bodies.

Article 1.7

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.

Article 1.8

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.

Article 1.9

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.

Article 1.10

With regard to security exceptions, the provisions of Article XXI of the GATT apply.

Article 1.11

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.

Revised Article 2.1

Automatic import licensing is defined as import licensing where approval of the application is freely granted in all cases in accordance with the requirements of Article 2.2, particularly within the time limits established in Article 2.2(e).

Article 2.2

The following provisions (footnote not reproduced but would remain intact), in addition to those in Article 1 and Article 2 (1) 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) 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 and as long as its 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 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.

New Article 3.1

Non-automatic import licensing is defined as import licensing not falling within the definition contained in Article 2 above.

New Article 3.2

Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

New Article 3.3

Given that certain types of non-automatic licensing, including licensing used to administer small quotas which fluctuate in size, or general prohibitions to which exceptions are granted, have the potential for being particularly trade distortive, Parties shall take particular care to implement such licensing requirements in a transparent and predictable manner.

New Article 3.4

To the extent that exceptions may be granted to licensing requirements, such exceptions shall be granted in a manner that is fair and equitable to all traders. Parties shall publish the criteria and/or circumstances under which exceptions may be granted. Notice of any exceptions granted shall be published as soon as possible to allow sufficient time for governments and traders to become familiar with them. In exceptional circumstances when prior publication is not possible, Parties shall publish and notify exceptions within fourteen days of granting them. Notifications shall include an explanation as to why prior publication was not possible.

Articles 3.5(a) (formerly Article 3(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 or distortive effects on imports additional to those caused by the imposition of the restriction;

Article 3.5 (b) (formerly Article 3(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;
- (ii) the import licences granted over a recent period;
- (iii) the distribution of such licences among supplying countries;
- (iv) 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;

Article 3.5 (c); (Revised Article 3(c))

Based on Committee Recommendation

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, within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

Article 3.5(d); (Revised Article 3(d))

Based on Committee Recommendation

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 publish this information within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

New Article 3.5(e)

Based on Committee Recommendation

Where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in Article 1.4 should be published within the time periods specified in Article 1.4, and in a manner as to enable governments and traders to become acquainted with them.

Article 3.5(f) (formerly Article 3(f))

Any person, firm or institution which fulfils 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 reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing country;

New Article 3.5(g)

Based on Committee Recommendation

The period for processing applications should not be longer than twenty-one days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than sixty days if all applications are considered simultaneously.

Article 3.5(h) (formerly Article 3(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;

Article 3.5(i) (formerly Article 3(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 quotas;

Article 3.5(j) (formerly Article 3(j))

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

Article 3.5 (k) (Revised former Articles 3(k) and 3(l))

In allocating licences, the Party shall consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licences have not been fully utilized, the Party shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also 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.

Article 3.5(l) (formerly Article 3(m))

In the case of quotas administered through licences which are not allocated among supplying countries, licence holders (footnote: sometimes referred to as "quota 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;

Article 3.5(m) (formerly Article 3(n))

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

Revised Article 4: Institutions

Revised Article 4.1

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 Vice 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.



New Article 5 - Notification

1. Parties which institute licensing procedures or changes in these procedures shall notify the Committee of such within thirty days of publication.
2. Each notification shall include the following information:
  - (a) list of products subject to licensing procedures;
  - (b) contact point for information on eligibility and submission of applications;
  - (c) date and name of publication where licensing procedures or changes in procedures are published;
  - (d) indication of whether licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;
  - (e) in the case of automatic licensing procedures, the circumstances giving rise to introduction of the licensing procedure and its underlying administrative purpose;
  - (f) in the case of non-automatic import licensing procedures, identification of the measure being implemented through the licensing procedure and the GATT basis for taking the measure; and
  - (g) expected duration of the measure and licensing procedure or reason why this information cannot be provided.
3. If a Party to the Agreement believes that another Party has implemented licensing procedures but has failed in part or total to satisfy the above notification requirements, the first Party may bring this failure to the attention of the Committee. The first Party may also cross-notify these licensing procedures. Such cross-notifications should include all relevant and available information regarding the existence and nature of the licensing procedures in question.

New Articles 6 (Consultation) and 7 (Dispute Settlement)

(This Agreement's provisions on consultation and dispute settlement should be examined with a view to their improvement and clarification taking into account, as appropriate, the work of the Negotiating Group on Dispute Settlement.)

New Article 8 - Review (formerly Article 5.5)

1. 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, rights and obligations and shall inform the contracting parties to the GATT of developments during the period covered by such reviews.

2. In conducting its review, the Committee shall examine the licensing régimes of each signatory to ensure their consistency with the principles and obligations of this agreement, particularly those specified in Articles 3.2, 3.3 and 3.4.

3. The Committee shall also examine whether the existing provisions of the Agreement are adequate to achieve its objectives.

4. To assist in this review, the Secretariat shall prepare a report based on the notifications, cross-notifications, and responses to the annual licensing questionnaires. Parties shall respond to this questionnaire in a prompt and thorough manner, ensuring that their response includes all the information specified in Article 5(2). A compilation of notifications and cross-notifications shall be appended to the report. This report shall serve as the basis for the Committee review.

5. The Secretariat shall submit its report to the Committee sixty days after the due date for responses to the annual questionnaire. It shall incorporate the best available information regarding the licensing practices of those Parties which have not submitted responses to the questionnaire.

6. The Committee shall begin its review not later than sixty days after the receipt of the Secretariat report. As appropriate, the Committee may establish Working Groups, consisting of Committee members, to assist in this review.

Article 9 (formerly Article 5)

Article 9.1: Acceptance and accession (formerly Article 5.1)

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

Article 9.2: Reservations (formerly Article 5.2)

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

Article 9.3: Entry into Force (formerly Article 5.3)

This Agreement shall enter into force on 1 January 1980 for the governments (footnote: For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Economic Community) which have 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.

Article 9.4 National Legislation (formerly Article 5.4)

- (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.

Article 9.6: Amendments (formerly Article 5.6)

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.

Article 9.7: Withdrawal (formerly Article 5.7)

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.