

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

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Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on MTN
Agreements and Arrangements

AGREEMENT ON IMPORT LICENSING PROCEDURES

Status of Work

Revision

The Informal Group which was established by the NG8 at its meeting of 31 January-2 February 1990 (reference MTN.GNG/NG8/15, item B) has met on 28 February, 4 May, 11 June, 9 July and 5 September 1990.

The attached text would form the basis for the further negotiations in this area. Amendments to the Agreement which have been proposed are set in **bold** type. Outstanding issues are indicated with square brackets. However, this does not prejudice further negotiations and changes as some issues are interlinked and some might require further clarification or understanding as to their precise meaning.

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 [procedures] is [are] not utilized in a manner contrary to GATT principles and obligations;]

[Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;]

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

Recognizing [also] that the inappropriate [or excessive] use of import licensing procedures [may] constitute[s] 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;

Agreement on Import Licensing Procedures

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: General Provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures¹ 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.
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.
3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

¹ Those procedures referred to as "licensing" as well as other similar administrative procedures.

Agreement on Import Licensing Procedures

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, **the administrative body(ies) to be approached**, and the lists of products subject to the licensing requirement shall be published **[in the sources notified to the GATT secretariat]** in such a manner as to enable governments and traders to become acquainted with them. **Such publication shall take place whenever practicable, twenty-one days prior to the effective date of the requirement but in all events not later than such effective date.** Any **exception, derogations or** changes in **or from** the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner **and within the same time periods as specified above.** Copies of these publications shall also be made available to the Secretariat.

Parties who wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Party shall give due consideration to these comments and results of discussion.

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.

Agreement on Import Licensing Procedures

6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. **Applicants shall be allowed a reasonable period for the submission of licensing applications. Where there is a closing date, this period should be at least twenty-one days with provision for extension in circumstances where insufficient applications have been received within this period.** Applicants shall have to approach only one administrative body in connection with an application. [and shall be allowed a reasonable period therefor. In cases] **Where it is strictly indispensable to approach more than one administrative body, [these shall be kept to the minimum number possible] [applicants shall not need to approach more than two administrative bodies].**
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.

Agreement on Import Licensing Procedures

Article 2: Automatic import licensing²

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(a).**

2. The following provisions,³ 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:

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

Automatic licensing procedures shall be deemed to have trade restricting effects unless inter alia:

(i) 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 **is** equally eligible to apply for and to obtain import licences;

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

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

² Those import licensing procedures requiring a security which have no restrictive effects on imports, are to be considered as falling within the scope of paragraphs 1 and 2 of Article 2 below.

³ A developing country Party, which has specific difficulties with the requirements of sub-paragraphs a(ii) and a(iii) below may, upon notification to the Committee referred to in paragraph 1 of Article 4, delay the application of these sub-paragraphs by not more than two years from the date of entry into force of this Agreement for such Party.

Agreement on Import Licensing Procedures

(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.

Article 3: Non-automatic import licensing

1. The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 above, shall apply to non-automatic import licensing procedures. **Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in Article 2.1 above.**
2. **Non-automatic licensing shall not have trade restrictive or distortive effects on imports additional to those caused by the imposition of the restriction. 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.**
3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Parties shall publish sufficient information for other Parties and traders to know the basis for granting and/or allocating licenses.
4. Where a Party provides the possibility for persons, firms, or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information published under Article 1.4 as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which requests would be considered.

Agreement on Import Licensing Procedures

5. (a) 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;

(b) 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.**

(c) 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.**

(d) **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.**

Agreement on Import Licensing Procedures

- (e) Any person, firm or institution which fulfils the legal **[and/or administrative]** 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;
- (f) The period for processing applications **[should [normally] [where practicable] not be longer than [twenty-one] [thirty] days if applications are considered as and when received, i.e. on a first-come first-served basis, and [normally] [where practicable] [no longer than sixty days] if all applications are considered simultaneously.]** In the latter case the period for processing applications shall be considered to begin on the day following the closing date of the announced application period.
- (g) 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;
- (h) 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;
- (i) When issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;

Agreement on Import Licensing Procedures

(j) In allocating licences, the Party should 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 licenses 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 licence 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.

(k) 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.

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

Agreement on Import Licensing Procedures

Article 4: Institutions [consultation and dispute settlement]

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.
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.] **See new Articles 6 (Consultations) and 7 (Dispute Settlement) below.**

Agreement on Import Licensing Procedures

Article 5 - Notification

1. Parties which institute licensing procedures or changes in these procedures shall notify the Committee of such within [ninety] [sixty] [thirty] days of publication.
2. Notifications of the institution of import licensing procedures shall include the following information:
 - (a) list of products subject to licensing procedures;
 - (b) contact point for information on eligibility;
 - (c) administrative body(ies) for submission of applications;
 - (d) date and name of publication where licensing procedures are published;
 - [(e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;
 - (f) in the case of automatic licensing procedures, the circumstances giving rise to introduction of the licensing procedure and its underlying administrative purpose;
 - (g) 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
 - (h) expected duration of the licensing procedure or reason why this information cannot be provided.]
3. Notifications of changes in import licensing procedures shall indicate the elements mentioned above, if changes in such occur.

Agreement on Import Licensing Procedures

[4. Any interested Party which considers that another Party has not notified the institution of a licensing procedure or changes therein in accordance with the provisions of paragraphs 1 to 3 above, may bring the matter to the attention of such other Party. If notification is not made promptly thereafter, such Party may itself notify the licensing procedur or changes therein, including all relevant and available information.]

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.)

Agreement on Import Licensing Procedures

Article 8: Review

Alternative 1

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 thereof, **and the rights and obligations contained therein. [In doing so it shall examine the licensing [regimes] [procedures] of each Party in the light of the provisions of this Agreement and shall also examine whether these provisions are adequate to achieve its objectives.]**

[2. As a basis for the Committee review, the secretariat shall prepare a factual report based on information provided under Article 5, responses to the annual licensing questionnaire and other relevant reliable information which is available to it. Parties undertake to complete the annual licensing questionnaire promptly and in full.]

[3. Reports prepared in accordance with this Article shall, inter alia, describe the licensing [regimes] [procedures] of each Party, and changes or developments in those regimes over the review period]

Agreement on Import Licensing Procedures

Alternative II

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 thereof, **and the rights and obligations contained therein. [While undertaking its review, the Committee should examine any difficulties concerning the Agreement brought to its notice by affected Parties. The Committee may call for a factual report regarding the import licensing procedures of any concerned Party. The secretariat shall furnish the above report based on responses to the annual licensing questionnaire and other relevant, reliable information available to it.]**

[4][2] The Committee shall inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

Agreement on Import Licensing Procedures

Article 9: 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;
- (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 (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.

Agreement on Import Licensing Procedures

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. 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.

6. Withdrawal

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.

Agreement on Import Licensing Procedures

Proposed Changes in text of proposed Agreement on Import Licensing Procedures to make it applicable to licensing procedures in general (i.e. imports and exports)

<u>Page 2:</u>	Preamble:	Delete the word "Import" before "licensing" wherever it occurs.
<u>Page 4:</u>	Article 1.1:	Delete "Import" before "licensing" in lines 1 and 2. Add "or export" after "importation" in line 5. Add "or exporting" after "importing" and words "as the case may be" after country in line 6.
	Article 1.3:	Delete "Import" before "licensing".
<u>Page 6:</u>	Article 1.8:	Add "or exports" after "Imports" in line 1.
<u>Page 7:</u>	Article 2.1:	Delete "Import" before "licensing".
	Article 2.2:	In line 3, delete "Import" before "licensing".
	Article 2.2(a):	Add "or exports" after "imports" in line 2.
	Article 2.2(i):	Delete "import" before "licences".
<u>Page 8:</u>	Article 3.1:	Delete "Import" before "licensing" wherever it occurs.
	Article 3.2:	In line 2, add "or exports" after "Imports".
<u>Page 9:</u>	Article 3.5(a):	Delete "Import" wherever this occurs.
	Article 3.5(c):	Add "Import" before "quotas".

Agreement on Import Licensing Procedures

Page 10: Article 3.5(g): Add "or exports as the case may be" after "Imports" in line 2.

Article 3.5(h): Add "Imports" before "quotas" in line 1.

Page 11: Article 3.5(j): Delete "Import" before "Performance" in line 1. On line 7 add "In relation to imports" before "Consideration shall also be given".

Article 3.5(k): In line 1, add "import" before "quotas".

Page 12: Article 4.1: Delete "Import" in line 1.

Page 13: Article 5.2(g): Delete "Import" before "licensing" in line 1.]