

WORLD TRADE ORGANIZATION

RESTRICTED

G/LIC/N/3/CRI/1

23 January 1996

(96-0235)

Committee on Import Licensing

Original: Spanish

REPLIES TO QUESTIONNAIRE ON IMPORT LICENSING PROCEDURES

NOTIFICATION UNDER ARTICLE 7.3 OF THE AGREEMENT ON IMPORT LICENSING PROCEDURES

COSTA RICA

The following notification, dated 21 November 1995, has been received from the Permanent Mission of Costa Rica.

Outline of systems

1. In connection with its accession to GATT in 1990, Costa Rica undertook to eliminate all existing import licensing requirements over a period of four years. This commitment was carried out in full by the end of 1994 with the entry into force of the Law on the Implementation of the Uruguay Round Agreements, No. 7473 of 20 December 1994. Article 1 of that Law provides specifically for the elimination of existing licensing requirements and in general for the elimination of any similar procedure requiring permits, prior authorization or approval for the importation of goods. Accordingly, import licensing requirements of a commercial nature were entirely eliminated together with the accompanying procedures.

However, in conformity with its commitments under the Uruguay Round Agreement on Agriculture, Costa Rica has established tariff quotas for certain agricultural commodities for which non-tariff import barriers were tariffed. These quotas are not administered through import licensing as was previously the case in Costa Rica, but through an innovative market mechanism requiring certain administrative and documentary procedures which are described in detail below.

Purposes and coverage of licensing

2. In Costa Rica, one single import licensing system is currently in force. That system is governed by the Regulation on the Allocation of Tariff Quotas. In compliance with the provisions on the tariffication of import licensing for agricultural products in the Uruguay Round Agreement on Agriculture, current access and minimum access tariff quotas are administered and awarded through a procedure involving the granting of commodity exchange certificates authorizing importations within the indicated tariff quota at a lower tariff rate than for imports outside of that quota.

This procedure consists in a transparent mechanism whereby licences (certificates) are awarded on the basis of a transparent market system. They are awarded through the commodities exchange to the importer or exporter making the best import bid, a process which does not involve any payments that might distort the price agreed upon in the sale and purchase contract for the item in question (apart

from the fees charged for the actual Exchange transactions). The licence does not consist in an authorization to import *per se* (such authorization is not required: payment of the MFN import tariff is sufficient), but in an authorization to import on the basis of the reduced tariff assigned to a given quota.

These transactions may take place on any commodity exchange authorized to operate within the country. Only the *Bolsa de Productos Agropecuarios S.A.* (Stock Exchange for Agricultural Commodities Ltd.) is currently in operation. In principle, as soon as the procedure is initiated, potential parties to the Exchange transaction (foreign exporter or domestic importer) may at any time establish, through a member of the Exchange, the terms of the sales contract, provisionally laying down the price, the quantity and the specifications. Prices are quoted DDP (delivery duty paid). The preliminary contract is then put to public auction, in which process the commodities exchange may award the contract to any party (exporter or importer) improving on the price conditions set out in the preliminary contract. If no better terms are offered, the preliminary contract is accepted and the importer is entitled to an import licence for the product in question, a licence which is provided in the form of a certificate. The quantity of goods thus transacted is deducted from the tariff quota for that commodity, the amount of which, as explained below, is made known to the parties beforehand.

Official control of the quota is ensured by conducting a cross-control between the commodities exchanges and the Ministry of Agriculture and Livestock of the amount transacted. The licence holder must actually have imported the goods within a maximum time-limit published by the Ministry of Agriculture.

These commodities exchange transactions, both individually and jointly, are subject to a maximum quantitative limit equal to the maximum amount that can be imported in accordance with the tariff quota. The quotas are allocated periodically.

The procedures for the awarding of such certificates cover the commodities listed in Annex 1 hereto, which are classified according to the Harmonized Commodity Description and Coding System nomenclature.

3. The mechanism draws no distinction as to the origin or provenance of the imported goods. Indeed, it seeks to ensure free trade and non-discrimination, and consequently, the goods may come from any country in the world. The aim is to control the quantity of imported goods and not their origin.

4. The mechanism is designed to limit the quantity of imports, and not their value.

Before this mechanism was selected, others were considered. For example, the "first come, first served" method was examined and rejected as arbitrary and not sufficiently transparent.

Consideration was then given to various methods for the allocation or sale of licences by auction, but these were also rejected for two reasons: first, because in Costa Rica, the collection, administration and allocation of the funds raised through the sale of licences would require the drafting of a special law, and the moment was not considered right for submission to the Legislative Assembly of a bill to that effect; second, because charging for a licence would distort the import price of the goods, or in other words, the amount charged would be reflected in the final price of the goods, thus undermining the ultimate objective of ensuring a minimum amount of trade liberalization. Moreover, it would mean the creation of another non-tariff barrier in violation of the spirit of the Agreement on Agriculture.

5. The Regulation on the Allocation of Tariff Quotas is contained in Executive Decree 23914-COMEX-MAG of 22 December 1994, published in Official Gazette No. 246 of

27 December 1994 and revised by Executive Decree 24599-COMEX-MAG of 9 August 1995, published in Official Gazette No. 176 of 18 September 1995. Article 5 of the Law on Implementation of the Uruguay Round Agreements, No. 7473 of 20 December 1994, provides the legal basis for these decrees. Licensing is statutorily required. Costa Rican legislation does not leave the designation of products to be subjected to licensing to administrative discretion. The goods concerned are those that have been tariffied in accordance with the commitments of the Uruguay Round. The executive branch is entitled under the above-mentioned Law 7473 to abolish or amend licensing procedures without legislative approval.

Procedures

6.I Quotas are not allocated to any country or person in particular, but are placed at the disposal of the economic operators in general, who may participate in the transaction through the commodities exchange. The transaction does not involve any special formalities, and no special applications are required for licences. The economic operators must submit their offers to the commodities exchange through a member of the exchange, who is required to present a "transaction order", a document ordinarily required for all transactions on the commodities exchange, in which the operator authorizes the member of the exchange to carry out the transaction on his behalf. Consequently, there is no need to publish information concerning allocation of quotas and formalities or to provide any information on that subject to possible importers, governments, export promotion bodies or trade representatives.

While the overall amounts of the quotas and the date of their opening is made public beforehand, publication of the amount allocated to each country or each importer is not required, since the mechanism is not based on any kind of prior allocation. The opening of quotas is announced in the Official Gazette 10 working days in advance. A public announcement is also made through the most widely-read newspapers. The law does not provide for any exceptions or derogations from the licensing requirement.

II. The size of the quotas was determined on the basis of the methodology and commitments established during the negotiation of the Uruguay Round Agreement on Agriculture (Schedule LXXXV for Costa Rica). For those products, quotas were determined for the entire period of application of the commitments contained in the Agreement (1995-2004). Article 4 of the Regulation on the Allocation of Tariff Quotas authorizes the Ministry of Agriculture and Livestock to determine the intervals at which tariff quotas are made available to the public. The interval may vary according to the characteristics of each product. The total or partial opening of a quota for a given period is made public 10 days in advance. The licence or certificate awarded by the commodities exchange must be used within the time-limit specified in the document itself, and is not transferable. The licence holder must effect the imports during the period of validity of the licence, failing which he may not apply that licence to a quota subsequently opened for the same product.

III. The mechanism functions as described above. In no circumstance may licences be deliberately allotted partly or only to the domestic producers of like goods. Like all other economic operators domestic producers are entitled to participate in the exchange procedures, subject to the same conditions.

Article 14, paragraph 3 of the Regulation stipulates that any buyer or seller, whether a physical or legal person, who has firmly committed himself such a transaction and subsequently breaks his contract without effecting the imports, or who, contrary to his responsibilities, fails to effect the imports within the set time-limit, shall be barred from participating in the negotiation of quotas either directly or through a third party for a period of two years from the date of the transaction. The same provisions shall apply to those who cancel a transaction to which they have firmly committed themselves. In order to apply these measures, the Ministry of Agriculture and Livestock shall institute ordinary administrative proceedings, ensuring due process of the law for those affected.

The Regulation does not authorize the addition of unused allocations for a given year, in full or in part, to quotas for a succeeding year, and it is not possible to do so. However, if the amount of a quota for a given year is made available to the public over two or more periods during that year, it is possible to add the unused quotas to a succeeding period within the same year.

Under Article 18 of the Regulation, the commodities exchanges are required to keep a detailed register containing each transaction carried out by them, and to publish the information periodically in the Official Gazette in summary form. There is nothing preventing a government or export promotion body of an exporting country from obtaining a copy of that publication on request.

IV. Bids may be submitted to the exchange as soon as the quotas are opened, i.e. 10 working days following the announcement of the quotas.

V. This question does not apply to the procedure described.

VI. This question does not apply to the procedure described. The negotiation of quotas begins as soon as the quotas themselves are opened. Consequently, it would be meaningless to speak of the time remaining between the awarding of the certificate and the date of opening of the quota.

VII. As no application is required, it is possible to participate in exchange transactions without submitting any papers to any administrative organ.

VIII. The allocation of quotas to a given importer is based on market criteria. A quota is awarded through the exchange to the importer offering the best price for the amount offered.

There is no maximum amount to be allocated per importer beyond the total amount of the quota made available to economic operators for a given period.

IX. This question does not apply to the procedure described.

X. This question does not apply to the procedure described.

XI. There are no products for which licences are issued only on condition that goods should be exported and not sold in the domestic market.

7. Not applicable: the mechanism described deals exclusively with the quantitative limits.

8. This mechanism does not involve applications for licences. Economic operators who do not submit the best offer during the commodities exchange proceedings will not be awarded licences or certificates. Because the trade transactions take place on the exchange, there is no need either for the commodities exchange or for the government institutions to give reasons for the refusal of a participant, nor can the result of the proceedings be appealed. There is a tacit understanding that the award will not go to an operator who has not submitted the best offer.

Eligibility of importers to apply for a licence

9. Any national or foreign physical or legal person has the right to participate in the negotiation process through a member of the exchange without prior registration or official authorization. The only condition is that he must participate through a duly authorized member of the exchange.

Documentational and other requirements for application for a licence

10. No application is required in order to engage a member of the exchange to participate in a transaction. This is done on the basis of a private arrangement between the economic operator and the member of the exchange.
11. Upon actual importation, the customs authorities require the ordinary international trade documents and the certificate awarded by the commodities exchange in which the transaction took place. That certificate entitles the licence holder to import a given quantity of goods at a lower tariff rate and within a duly indicated period.
12. There is no licensing fee or administrative charge.
13. The issue of a licence is not subject to any deposit or advance payment.

Conditions of licensing

14. The executive branch may for each case set a maximum time-limit for the importation of the goods in question. That limit, together with the conditions for its extension, is indicated in the agreement which is issued periodically upon opening of the quotas. The first agreement of the executive branch, issued in connection with the opening of the first quotas for 1995, established a time-limit of two months, extendable for a period of one further month upon proof that the importation could not be effected for reasons beyond the control of the importer. The same time-limit was maintained in the agreement issued by the executive branch in connection with the opening of the quotas for the period corresponding to the second semester of 1995.
15. The sanctions applied are described in paragraph 6.III above.
16. Article 8 of the Regulation stipulates that licences are not transferable.
17. There are no other conditions attached to the issue of a licence.

Other procedural requirements

18. Importation is not subject to any administrative procedures other than licensing and sanitary and phytosanitary measures.
19. The banking authorities provide the foreign exchange required for the payment of imports immediately. No licence is required in order to obtain foreign exchange. There have been no problems of scarcity of foreign exchange thus far. There are no special formalities for obtaining foreign exchange.