

IMPORT LICENSING SYSTEM OF ARGENTINA

Replies by Argentina to Questions from Canada, China, the European Union,
Japan, Mexico, Peru and the United States

The following communication, dated 3 May 2010, is being circulated at the request of the delegation of Argentina.

We continue to be greatly concerned about Argentina's import licensing system and how it is being used to restrict trade. We are also troubled by the lack of transparency of the current system and the burdens and delays our exporters report that it is placing on their goods at importation.

We therefore request that Argentina provide detailed responses to the following questions:

1. *Some companies report that they have been told that their import licence application will not be approved unless the company agrees to trade balancing requirements established by the Secretary of Domestic Trade. These companies also tell us that in order to obtain a licence to import goods, they must show an increase in exports of the same dollar value of Argentina-originating goods. Other companies report that Subsecretaría de Política y Gestión Comercial requires additional information in order to issue an import certificate for miscellaneous products, such as a process diagram showing the entire production cycle of the goods subject of the application; details of the inputs used (origin and relative share in the final production cost) and a list of the products manufactured by the producing/exporting company.*

(a) *Could Argentina please provide an explanation for these measures, along with copies for the Committee of the laws and regulations that authorize and implement these requirements?*

As regards the first question, Argentina is unable to provide an explanation for such measures since they do not exist and there are consequently no laws or regulations in this respect.

The additional requirements are part of the processing of import certificates, which are published in Argentina's Official Journal, in accordance with Article 1.4(a) of the Agreement on Import Licensing Procedures.

(b) *Please indicate, in some detail, how Argentina considers this policy to be consistent with its WTO obligations.*

Concerning the request for additional information, Article 1.4(a) of the Agreement on Import Licensing Procedures provides that information regarding procedures and the submission of applications are to be published in sources notified to the Committee. It should be noted that

Argentina has regularly notified all import licences in effect, together with the respective regulatory provisions.

2. *We are not satisfied with the justifications provided thus far by Argentina for increasing the number of tariff lines subject to import licensing. In G/LIC/Q/ARG/8 Argentina claims that the expansion of non-automatic licence requirements is necessary for certain sensitive products due to changes in the trade flows caused by the world economic and financial crisis. We still question the specific underlying measure Argentina is implementing through this non-automatic import licence regime.*

- *Please explain specifically the measure being implemented through non-automatic import licensing and which WTO provision justifies Argentina's imposition of that measure.*

The measures implemented under the Agreement on Import Licensing Procedures are automatic and non-automatic import licensing; there is no specific underlying measure.

3. *In G/LIC/Q/ARG/8, Argentina states that the processing time at its ports of entry for non-automatic import licences is as stipulated in Article 3.5(f) of the Agreement on Import Licensing Procedures. However, industry and press reports continue to indicate that importers experience lengthy delays of well over 100 days to obtain a licence. We believe in the reliability of these reports, and we urge Argentina to take them seriously and help us obtain the information we are requesting.*

(a) *Please confirm in writing that the time-limits prescribed by the Agreement on Import Licensing Procedures are, in practice, being respected by all Argentine officials.*

The officials assigned to the import licensing system respect the time-limits prescribed by the Agreement on Import Licensing Procedures.

(b) *Please provide the specific citation to Argentina's regulations or laws that requires that non-automatic import licences be issued within 30-60 days.*

Law No. 24.425 of 1994 adopts and incorporates the Uruguay Round commitments, including the Agreement on Import Licensing Procedures, in the national legislation.

4. *In G/LIC/Q/ARG/8, Argentina indicates that applications for non-automatic import licences were previously examined on a first-come first-served basis, but currently they are considered simultaneously.*

(a) *What is the reason for this change in procedures? Why must applications now be considered simultaneously, a practice normally reserved for addressing quota allocations?*

Because of the addition of new products to the non-automatic licensing regime and in order to avoid cumbersome administrative procedures, it was decided that analysis of trade flow monitoring would be much swifter if import licence applications were examined simultaneously.

(b) *When was the new approach of simultaneous examination adopted and in what law or regulation?*

The Agreement does not demand or require the analysis of licence applications to be governed by a domestic regulation. It should be mentioned that Law No. 24.425 incorporating the Agreement on Import Licensing Procedures empowers the administrative authority to take such decisions.

5. *In G/LIC/Q/ARG/8 Argentina indicates that the main reason for requiring non-automatic import licences for the products covered by Regulation 61/2009 is that there have been significant changes in trade flows for these products, coupled with the increase in subsidies and tax refunds introduced to avoid bankruptcy and support production in various related economic sectors.*

- *How do these particular factors justify non-automatic import licences under WTO rules?*

Argentina wishes to state that there was a misprint in the response provided in document G/LIC/Q/ARG/8, since Argentina does not use licences because it uses subsidies or tax refunds.

Argentina also reiterates its response to the questionnaire in document G/LIC/Q/ARG/8 in the following terms: "The main reason is that the international economic and financial crisis adversely affected the real economy, with a particular impact on trade. In this context, significant changes were noted in the trade flows for these products. Hence it is necessary to evaluate these trends and the reasons underlying such changes. To that end, as a transitional measure, this mechanism for the verification of goods of different kinds was set up."

6. *Article 5.2(h) of the Agreement indicates that Members should include in their notifications the expected duration of the licensing procedure if this can be estimated with some probability, and if not, the reason why this information cannot be provided. Argentina responds to this question, however, by referencing either Article 2 or Article 3.5(f) of the Agreement, depending on whether the import licences are automatic or non-automatic. It is our understanding that Article 2.2(a)(iii) and Article 3.5(f) deal with the time period for processing an application, not the expected duration of the procedure.*

- *Please provide estimates of the expected duration of the import licence procedures that Argentina has imposed. If this information cannot be estimated with some probability, please provide reasons why it cannot be provided.*

Please provide further details regarding the difference between time period for processing a licence application and expected duration of the procedure. It is our understanding that the Agreement on Import Licensing Procedures only establishes time frames for the processing of licence applications and periods of licence validity.

7. *In G/LIC/Q/ARG/8, Argentina indicates that, even if import licensing procedures established by Argentinean regulations are referred to as "provisional", the continuation, and extension, of the non-automatic import licensing requirements over time is dictated by market conditions and the need to control compliance with the applicable technical standards and regulations, and environmental, safety and consumer protection regulations, and that non-automatic licences will be applied as long as the reasons for having to submit certain goods to pre-release verification and monitoring mechanisms still exist.*

(a) *What are those reasons when referring to compliance with applicable technical standards and regulations?*

Compliance with technical regulations, which also applies to domestic producers, is examined under the non-automatic licensing procedure. The implementing authority has to verify compliance by the importer of all existing essential requirements pertaining to consumer protection, road safety, electrical safety and environmental standards, in accordance with the regulations that apply to the product in question. Once it has been ascertained that the product meets the stipulated requirements (which are mandatory whether or not the product is

subject to import licensing), the competent body issues the licence within the prescribed time frames.

- (b) *In which circumstances would Argentina consider that it is no longer necessary to control such compliance through non-automatic import licences?*

In the short term, control of compliance with technical regulations is mandatory and necessary and will be conducted through the import licensing system. It should be pointed out that compliance with technical regulations is independent of whether or not a product is subject to import licensing.

8. *Please provide the following statistics:*

- (a) *Indication of the number of import licences granted from October 2008- October 2009;*

A total of 32,696 import certificates were issued between October 2008 and October 2009.

- (b) *Information on the distribution of licences among supplying countries; and*

Distribution by origin of the certificates issued is as follows: China accounted for 38.58 per cent, MERCOSUR countries for 36.14 per cent, the European Union for 5.03 per cent, and the remaining applicant countries for the remaining 20.6 per cent.

- (c) *The number of applications that are currently pending, and the average number of days those applications have been pending.*

There are approximately 5,300 applications currently pending, but it should be noted that none of these certificates exceeds the 60-day time-limit.

9. *In G/LIC/Q/ARG/8, Argentina explains that non-automatic import licences are a mechanism for the pre-release verification of goods that requires the importer to submit an application to the competent body, which verifies that the product complies with all of the technical standards and other requirements under the national regulations in force (the same ones that apply to domestic products) as well as the accuracy of the importer's data. If the product complies with these requirements, the competent body issues the corresponding licence within the stipulated time frame. The data that must be provided by the importers are set out in each one of the corresponding resolutions.*

- (a) *When were those referred technical standards and other requirements adopted? Please provide references to the relevant regulations.*

- **Law No. 24.240**, Normas de Protección y Defensa de los Consumidores (Law on Consumer Protection), adopted on 22 September 1993 and enacted on 13 October 1993;
- **Resolution SICyM 92/1998**, of 18 February 1998, and amendments thereto;
- **Resolution SICyM 851/1998**, of 16 December 1998, and amendments thereto;
- **Resolution SICyM 508/1999**, of 9 August 1999, and amendments thereto;
- **Resolution SICyM 653/1999**, of 8 September 1999, and amendments thereto;
- **Resolution SICyM 676/99**, of 21 September 1999, and amendments thereto;
- **Resolution SICyM 838/99**, of 17 November 1999, and amendments thereto;
- **Resolution SDCyC 287/2000**, of 12 December 2000, and amendments thereto;
- **Resolution SI 91/2001**, of 18 September 2001, and amendments thereto;
- **Resolution SICyPyME 220/2003**, of 30 December 2003, and amendments thereto;
- **Resolution SICyP 153/2005**, of 26 July 2005, and amendments thereto.

- (b) *On which basis did Argentina determine that non-automatic import licence requirements were necessary to verify compliance with those regulations?*

Under the requisite procedure for non-automatic import licences, the data gathered by the various government bodies can be compared and thus comprehensive information obtained on the product in question, including compliance with the relevant technical regulations.

10. *In G/LIC/Q/ARG/8, Argentina explains that where non-automatic import licences are required for certain tariff items, they are exempted from the automatic licensing requirement if they have been subjected to it. Please explain the reason for the decision to require non-automatic import licences to products for which only automatic import licences were required.*

The decision to require non-automatic licensing of products that were previously subject to automatic licensing was prompted by the significant changes in trade flows for these products, which called for the establishment of a verification and monitoring mechanism, other than automatic licensing, that could more accurately evaluate the reasons for such changes.

11. *In G/LIC/Q/ARG/8, Argentina claims that the justification for requiring non-automatic import licence requirements in the tyre sector lies in the need to establish, for these products, a pre-release verification mechanism to monitor and control imports of such goods, checking that they comply with the environmental, safety and consumer protection regulations governing their placement on the market, and controlling the accuracy of the data declared by the importer. When were those environmental, safety and consumer protection regulations adopted? Please provide copies of the relevant regulations. On which basis did Argentina determine that non-automatic import licence requirements were necessary to verify compliance with these regulations?*

The State must guarantee consumers' safety in using tyres under normal or foreseeable conditions of use. By means of Law No. 24.449 on traffic and road safety, adopted on 23 December 1994, and its supplementary provisions, it laid down the essential safety requirements that both imported and domestically produced tyres are required to meet before being sold in the market.

Likewise, in exercise of the powers conferred by Decree No. 1474/1994 establishing the National Standards, Quality and Certification System, the State must provide for quality assurance through the adjustment of standards and ensure that certification is granted by competent technical bodies. Accordingly, it must verify that importers meet the safety requirements laid down, in this particular instance, for tyres.

12. *Resolution 11/2008 of 25 January 2008 (amending measures establishing import certificates) prohibits the introduction of any rectification in the applications for, or in the licences already issued, and requires importers to make a new application.*

- *Please explain the reason for this prohibition and how this is consistent with Articles 1:7 and 1:8 of the Import Licensing Agreement.*

The variations provided for in the Agreement must be minor in terms of value, quantity or weight. Nonetheless, the regulation addresses the issue of the complexity of rectifying or amending a licence certificate. In order to facilitate the import licensing process, it provides for application for a new certificate containing the duly modified data.

13. *Following the replies by Argentina mentioned above, Argentina adopted still another Resolution (Resolution 337/2009 of 21 August 2009) extending import licensing procedures to certain auto parts and related products.*

(a) *Has Argentina already notified this measure to the WTO?*

The import certificate for auto parts and related products was notified on 3 November 2009 in document G/LIC/N/2/ARG/22.

(b) *Please confirm whether the licensing procedures for importation of these products are automatic or non-automatic and the conditions for issuing import licences.*

The procedure is non-automatic.

(c) *Please provide a detailed explanation for the extension of these procedures to these products in particular.*

The international economic and financial crisis has had a major impact on the automotive, and hence the auto parts, sector, leading to uncertainty for trade in the sector. Resolution 337/2009 therefore takes into account the sector's sensitivity to fluctuations in international trade, especially as regards products requiring an import certificate for auto parts and related products (CIAPA).

(d) *Please explain why import certificates (Certificado de Importacion de Autopartes y Afines) are only required for those goods destined for final consumption (Article 2).*

Problems arise in the domestic market for such products when imports are destined for the replacement market. Therefore, pursuant to Resolution MP 337/2009 automotive assembly plants are exempt from the CIAPA requirement, since exemption is provided when goods are destined for the manufacture of vehicles and/or their components.
