AGREEMENT ON IMPORT LICENSING PROCEDURES

Note by the Secretariat

At the meeting of the Negotiating Group held on 31 January-2 February 1990, an informal group, open to all interested countries, was established with the task of clarifying and exchanging views on the proposals under consideration (MTN.GNG/NG8/15, item B). This group held its initial meeting on 28 February 1990.

In pursuance of the Decision of the NG8 at its meeting on 21-22 March 1990 (MTN.GNG/NG8/16, para. 14) and following the second meeting of the informal group on 4 May 1990, attached hereto is an informal side-by-side text produced by the secretariat. It gives the status of work prior to the next informal meeting to be held on 11 June 1990.

Technical Barriers to Trade Division

Let/1673
Agreement on Import Licensing Procedures

PRESENT CODE

PROPOSAL BY THE UNITED STATES AND HONG KONG

COMMENT *

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;

No change. No change. No change.

One delegation suggested to include a reference to the recognition and reaffirmation of the GATT principles here rather than mention Article XI below.

No comments. No comments. No comments.

* This column summarizes main comments made, as, in the Secretariat's judgement, they seem to appear after the meetings of the Informal Group on 28 February and 4 May 1990. Earlier comments on the revised proposal (NG8/W/53/Rev.1), made at the November 1989 meeting, are summarized in MTN.GNG/NG8/14, paragraphs 57-75. Apart from particular comments on individual proposed provisions they point has been made that the whole text has to be considered in a comprehensive and balanced manner.
**Agreement on Import Licensing Procedures**

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<td>Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;</td>
<td>No change.</td>
<td>No comments.</td>
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<td>Desiring to ensure that import licensing is not utilized in a manner contrary to GATT principles and obligations;</td>
<td>Some delegations suggested the deletion of this provision because it was not the purpose of the Code to ensure consistency with substantive GATT principles and obligations. Some delegations believed that, in this paragraph and the next, since dealing with a procedural Code, the word &quot;procedures&quot; should be inserted after &quot;import licensing.&quot; Some other delegations warned against devoting too much time to this issue since it was difficult to distinguish what was procedure and what was substance; moreover, the Code already contained substantive provisions.</td>
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<td>Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;</td>
<td>Recognizing and reaffirming the provisions of Article XI of the General Agreement as they apply to import licensing;</td>
<td>One comment was to delete this reference because Article XI was not the only GATT Article which might be relevant. It was also suggested to delete the reference to Art. XI since this was a provision of substance. One suggestion was to add the word &quot;procedures&quot; at the end. The sponsors argued that Article XI was the principle GATT provision that gave rise to licensing procedures; other Articles built on Article XI or provided exceptions to the prohibition it contained. However, they were open to discuss inclusion of other Articles and of other language.</td>
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<td>Recognizing also that the inappropriate use of import licensing procedures may impede the flow of international trade;</td>
<td>Recognizing that the inappropriate or excessive use of import licensing procedures constitutes a particular impediment to the flow of international trade;</td>
<td>Two delegations believed the word &quot;excessive&quot; did not add to clarity or to the operational nature of the Code and would be difficult to measure. One delegation suggested inserting the words &quot;could constitute further&quot; instead of &quot;constitutes a particular impediment&quot; to show there was an element of doubt.</td>
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<td>Convinced that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner;</td>
<td>No comments.</td>
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<td>Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;</td>
<td>No comments.</td>
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<td>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;</td>
<td>No change.</td>
<td>No comments.</td>
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<td>Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;</td>
<td>No change.</td>
<td>No comments.</td>
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Agreement on Import Licensing Procedures

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<td>Hereby agree as follows:</td>
<td>In a general comment, one delegation said that what was added in the Preamble was in line with the purpose and scope of the Code. It was therefore prepared to amend the Code in all regards which were in line with the Preamble.</td>
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**Article 1: General Provisions**

**Article 1.1**
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.

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

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<td>No change.</td>
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### Article 1.3
The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

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Article 1.4
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.

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.

Some delegations have noted that they did not have specific opening dates for the submission of applications. One delegation, using a tender system, said that the word "consideration" instead of "submission" would meet this point. Another delegation has argued that time limits might create impediments to trading and that the 21 day period had to do with a quota system, which its authorities did not follow. One delegation said that Article 1.4 should be made more generic and applicable to all systems. The drafters agreed.

Recommendation adopted by the Committee on Import Licensing Procedures on 19 May 1987:
"The rules and all information concerning procedures for the submission of applications referred to in Article 1.4 and the lists of products subject to the licensing requirement, as well as any changes in either
### Agreement on Import Licensing Procedures

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| | the rules or the lists of products should, where there is a specific opening date for the submission of applications, normally be published at least 21 days prior to that date. |
| | "The elements of information referred to in Article 3(c) should also be published in such a manner as to enable governments and traders to become acquainted with them." |

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.

One delegation, supported by another, said that the political and administrative system in its country did not permit consultations with other governments before making changes in policies or procedures. Hence, an obligatory opportunity for making comments in writing and discuss upon request was not acceptable. Two delegations were concerned that this paragraph might make the licensing authorities' job administratively complex. One of these proposed the following language: "During this twenty-
one-day period, Parties shall be provided the opportunity to make comments in writing and to discuss these comments upon request, if either the rules concerning licensing procedures or the list of products subject to import licensing, changes in these rules or list may have a significant effect on trade of these Parties. The concerned Party shall etc. . .” In reply to a question it said that "significant effect" would be assessed by the administrative authority. The sponsors replied that the time limit proposed was based on a Committee Recommendation but that perhaps "twenty-one-day period" could be replaced by the notion of expeditiousness. Another delegation tentatively agreed with this idea. The sponsors have also stressed that the intention is to provide for a best-endeavour clause.
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<td>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.</td>
<td>Two delegations have expressed concern that the word &quot;situations&quot; might permit systematic use of this paragraph. Although there was a Committee Recommendation (see Recommendation in Article 3.5(e)), this paragraph might have to be reevaluated. The sponsors have replied that the Committee Recommendation had been carefully reflected upon. This paragraph was a response to concerns voiced earlier on the time-frame; case by case exceptions were envisioned, not systematic exceptions.</td>
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### Agreement on Import Licensing Procedures

#### Present Code

**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**
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.

#### Proposal by the United States and Hong Kong

**Article 1.5**
No change.

**Article 1.6**
(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 the 21 days.)

#### Comments

**Article 1.5**
No comments.

**Article 1.6**
Committee Recommendation of 19 May 1987: "When there is a closing date for the submission of licensing applications, applicants should be allowed at least 21 days for making such submissions. However, this provision should not be interpreted as derogating from Article 3(a), particularly in cases where insufficient amounts of applications have been received within the 21 days."

One delegation visualized possible misuse as there could be a great rush for applications.
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<td><strong>this stipulated period.</strong> 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.**</td>
<td>with such advance notices of closing dates. The sponsors replied that unlike Art.1.4 which dealt with notification in advance, this proposal dealt with how much time should be allowed for submission of applications. Stating 21 days would give predictability to traders who would not have to rush to get applications in. Questions were also raised regarding the intention of the cross reference to Article 3(5)(a).</td>
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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.**

Committee Recommendation of 19 May 1987: "In cases where it is strictly indispensable that more than one administrative body is to be approached in connection with an application, applicants should not need to approach more than two administrative bodies."
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One delegation stated that a maximum of two bodies did not seem justified as long as the norm of one administrative body had been fixed. Due to administrative complexities, import of certain items might need the clearance of more than two bodies and no limit should be set. The sponsors replied that it was essential to have limits on bodies to assist exporters. While agreeing on this, one delegation suggested perhaps to introduce the words "concerned party will ensure" so that the responsibility was clearly on the government. The point was made that a government could have as many bodies as it wished but the applicant should only have to go to two at the most. One delegation, sharing the objective of avoiding undue trade hindrances, noted that in a federal system, more than two bodies might be needed and that it would have to consider how to avoid unintended consequences if a limitation were placed in the Code.
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.
**Agreement on Import Licensing Procedures**

**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.

**No change.**

**No comments.**

**Article 1.10**
With regard to security exceptions, the provisions of Article XXI of the GATT apply.

**No change.**

**No comments.**

**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.

**No change.**

**No comments.**
# Agreement on Import Licensing Procedures

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<th>Article 2: Automatic import licensing</th>
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<td>Article 2.1</td>
<td>Revised Article 2.1</td>
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| Automatic import licensing is defined as import licensing where approval of the application is freely granted. | 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). | One delegation considered that the amendments proposed originally might lead to confusion and that it was superfluous to refer to the legal consequences found in Art. 2.2 in this definition of the automatic license itself. The sponsors replied that their main concern was about Art. 2.2(e), stated that they would be amenable to the following: "where, in all cases, approval of the application is freely granted within a maximum of [7] [10] working days."

One delegation noted that "licensing" made it unclear whether it was a question of any particular license which was freely granted, or a licensing system which provided for freely granted applications.

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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.
## Agreement on Import Licensing Procedures

### Article 2.2

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:

(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;

### Article 2.2

No change.

### Article 2.2

No comments.

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3 A developing country Party, which has specific difficulties with the requirements of sub-paragraphs (d) and (e) 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.
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<td>(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;</td>
<td>No change.</td>
<td>No comments.</td>
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<td>d) Applications for licences may be submitted on any working day prior to the customs clearance of the goods;</td>
<td>No change.</td>
<td>No comments.</td>
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<td>(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.</td>
<td>No change.</td>
<td>One delegation suggested setting the limit at seven days.</td>
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<td><strong>Article 3:</strong> Non-automatic import licensing</td>
<td><strong>New Article 3.1</strong> Non-automatic import licensing is defined as import licensing not falling within the definition contained in Article 2 above.</td>
<td>One delegation believed that this paragraph should make reference to Art. 2.1 specifically, not Art. 2 in general. The sponsors replied that Art. 2 was referred to here because of the cross-reference to Art. 2.2 in Art. 2.1. They were open to tightening the definition of Art. 2.1 so it could stand on its own, and be only referred to in Art. 3.1.</td>
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<td><strong>New Article 3.2</strong> 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.</td>
<td>The sponsors referred to this proposal as modest, stipulating nothing more nor less than that an import licensing procedure should not extend beyond the measure it implemented. They have agreed with a comment by one delegation that Art. 3.2 should follow Art. 3.5(a) without separation. One delegation has suggested the deletion of the word &quot;absolutely&quot;</td>
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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 3.3

One delegation believed this was preambular rather than operative language; it was not precise enough to show what kind of licenses the drafters had in mind. The sponsors noted that a core concern behind this proposal was the fact that the provisions on licensing requirements used to implement QR's were not paralleled in provisions for licensing to implement other measures. In the case of licensing requirements for purposes other than the implementation of QR's, Parties should publish sufficient information for other Parties and traders to know the basis for granting and/or allocating licenses. The aim was primarily to increase transparency in this area. They were ready to consider a reformulation. (The sponsors have also said that this was an attempt to describe discretionary licensing: those cases
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where government imposes a small quota which varies unpredictably and not transparently. One delegation has also said that it did not believe discretionary licensing fitted into the non-automatic category and another delegation has said that the best way to reduce discretionary licensing was not to have such an exception provided for in the rules. Discretionary licensing was more a matter of the underlying measure. It has also been suggested to create a third category of other, miscellaneous licenses.)
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.

New Article 3.4
One delegation wondered what exceptions the drafters had in mind. If what was meant was a special provision for exceptions to the rule, this might implicitly recognize them. Exceptions to a rule was part of the rule and should be dealt with in Article 1.4. The proposed new Article 3.4 was therefore superfluous. The drafters noted that "exceptions" would cover both exceptions from a licensing requirement per se, and exceptions to any requirement in the procedure for obtaining a license. The problem was that governments sometimes treated exceptions as something that need not be provided for in the rules but could be dealt with on an ad hoc basis as the need arose. It was important to increase transparency through prior publication of the criteria and conditions under which exceptions might be granted. This meant that governments
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had to examine their regimes and identify the circumstances for which, at least in the past, they had granted exceptions. However, the intention was not to stipulate rules in the Code which would restrict the ability of a government to grant exceptions. The point was that if exceptions were granted this should be done in a fair, equitable, non-discriminatory and transparent way. The other delegation maintained that if identification of circumstances and criteria was a question of the objective conditions that had to be fulfilled in order to grant an exception, this was part of the rule and belonged to Article 1.4.

In the discussion of an example it was said that extension of the validity of a license was not an exception but a part of the rule. The drafters explained that if such an extension was dealt with by some exceptional procedure not
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<td>covered by regulations, it would be covered under this proposal.</td>
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<td>The point was made that the need to respect commercial confidentiality should be taken care of in the drafting as well as the fact that a number of circumstances would arise that could never be foreseen.</td>
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<td>Another delegation shared this view, adding that trying to identify rules to deal with exceptions was too ambitious. Concerning &quot;fair and equitable&quot; in the first sentence, one should presume that governments would adhere to their obligations and, thus, not resort to deviations unless for really exceptional reasons.</td>
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<td>One delegation expressed no preference for any of the approaches suggested. The problems had to be dealt with however. Possibly the clarification of the intention of this provision could be referred to the Preamble or to a footnote.</td>
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The question of national security implications of a publication requirement has also been raised. The drafters have said that national security exceptions are taken care of in Article XXI and that parties were not required to publish such information.

Article 3(a)

(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;

Article 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.

One delegation asked what the implications were of "or distortive." The sponsors replied that licensing could have two effects: lessen amount of trade and change the flows from one country to another, i.e. distort.
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<td>Article 3(b)</td>
<td>Article 3.5 (b) (formerly Article 3(b))</td>
<td>No substantive changes.</td>
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(b) Parties shall provide, upon the request of any Party having an interest in the trade in the product concerned, all relevant information concerning:

1. the administration of the restrictions;
2. the import licences granted over a recent period;
3. the distribution of such licences among supplying countries;
4. 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;

No comments.
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**Article 3(c)**

(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;

**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(c): (Revised Article 3(c))**

One delegation, referring to the reference to Art. 1.4 in Article 3.5(c)(d)(e), noted that again the proposal for a time period of 21 days presupposed and laid too much emphasis on quota systems. This country did not use quota systems to implement licensing regimes and would have difficulties with a reference to Article 1.4, if Art. 1.4 were to be revised as proposed. The sponsors replied that Article 3.5, dealt solely with quotas, and stated that they would be amenable to the following alternative addition, which would also apply to Article 3.5(d) and (e) below: "at least 21 days prior to the opening date for such quotas."

One delegation, while having accepted the Recommendation, said that introducing 21 days would create a problem because it currently used 8 days which allowed it, in a
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flexible manner, to deal with its licensing procedures for certain agricultural products. 21 days would mean less flexibility and less importation.

Committee Recommendation of 19 May 1987: "The elements of information referred to in Article 3(c) should also be published in such a manner as to enable governments and traders to become acquainted with them;"

Article 3(d)

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;

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

Committee Recommendation of 19 May 1987: "Information on shares in a quota currently allocated, by quantity or value, among supplying countries, referred to in Article 3(d), should be published within the same time period."

See under Article 3.5 (c) above.
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Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

Article 3(e)

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.

New Article 3.5(e)

Committee Recommendation of 19 May 1987: "where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in Articles 1.4 and 3(e) should be published no later than 7 days after the announcement of the quota or other measure involving an import licensing requirement."

See under Article 3.5(c) above.
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</thead>
<tbody>
<tr>
<td>Article 3(f)</td>
<td>Article 3.5(f) (formerly Article 3(f))</td>
<td>No substantive changes.</td>
</tr>
<tr>
<td>(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;</td>
<td>Article 3.5(f) (formerly Article 3(f))</td>
<td>One delegation suggested to amend this provision by adding &quot;legal and/or administrative requirements. . .&quot;</td>
</tr>
</tbody>
</table>
### Agreement on Import Licensing Procedures

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<tr>
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</thead>
<tbody>
<tr>
<td><strong>Article 3(g)</strong></td>
<td><strong>New Article 3.5(g) Based on committee recommendation</strong></td>
<td><strong>New Article 3.5(g)</strong></td>
</tr>
<tr>
<td>(g) The period for processing applications shall be as short as possible;</td>
<td>The period for processing applications <em>should not be</em> 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.</td>
<td>Some delegations believed that the 21 day limit might not be sufficient. Some delegations accepted the proposal provided the time period could be made longer. One delegation proposed 30 days. One delegation proposed to add &quot;where practicable,&quot; before 21 days. One delegation preferred a precise language. Another delegation stated that it preferred the existing Code language. If there was to be a change, flexibility was needed to cater to a range of different systems.</td>
</tr>
</tbody>
</table>

Committee Recommendation of 19 May 1987: "The period for processing applications should normally not be longer than 21 days if applications are considered as and when received, i.e. on a first-come first-served basis, and normally no longer than 60 days if all applications are considered simultaneously;"
<table>
<thead>
<tr>
<th>Article 3(h)</th>
<th>Article 3.5(h) (formerly Article 3(h))</th>
<th>Article 3.5(h) (formerly Article 3(h))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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;</td>
<td>No substantive changes.</td>
<td>No comments.</td>
</tr>
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</table>

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<thead>
<tr>
<th>Article 3(i)</th>
<th>Article 3.5(i) (formerly Article 3(i))</th>
<th>Article 3.5(i) (formerly Article 3(i))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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;</td>
<td>No substantive changes.</td>
<td>No comments.</td>
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</table>

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<thead>
<tr>
<th>Article 3(j)</th>
<th>Article 3.5(j) (formerly Article 3(j))</th>
<th>Article 3.5(j) (formerly Article 3(j))</th>
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<tbody>
<tr>
<td>(j) When issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;</td>
<td>No substantive changes.</td>
<td>No comments.</td>
</tr>
</tbody>
</table>
### Agreement on Import Licensing Procedures

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<table>
<thead>
<tr>
<th>Article 3(k)</th>
<th>Article 3.5 (k) (Revised former Articles 3(k) and 3(l))</th>
<th>Article 3.5 (k) (Revised former Articles 3(k) and 3(l))</th>
</tr>
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<tbody>
<tr>
<td>(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;</td>
<td>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;</td>
<td>One delegation suggested retaining the word &quot;should.&quot;</td>
</tr>
</tbody>
</table>
### Agreement on Import Licensing Procedures
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<thead>
<tr>
<th>Present Code</th>
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<tbody>
<tr>
<td><strong>Article 3(m)</strong></td>
<td><strong>Article 3.5(l) (formerly Article 3(m))</strong></td>
</tr>
<tr>
<td>(m) In the case of quotas administered through licences which are not allocated among supplying countries, licence holders (footnote: sometimes referred to as &quot;quota holders&quot;), 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;</td>
<td>In the case of quotas administered through licences which are not allocated among supplying countries, licence holders (footnote: sometimes referred to as &quot;quota holders&quot;), 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.</td>
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<tr>
<th>Article 3(n)</th>
<th>Article 3.5(m) (formerly Article 3(n))</th>
<th>Article 3.5(m) (formerly Article 3(n))</th>
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</thead>
<tbody>
<tr>
<td>(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.</td>
<td>In applying Article 1(8) above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.</td>
<td>No comments.</td>
</tr>
</tbody>
</table>
### Agreement on Import Licensing Procedures

**Present Code**

<table>
<thead>
<tr>
<th>Article 4: Institutions, consultation and dispute settlement</th>
<th>Revised Article 4: Institutions</th>
<th>Comments</th>
</tr>
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<tbody>
<tr>
<td>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 &quot;the Committee&quot;). 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.</td>
<td>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 &quot;the Committee&quot;). 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.</td>
<td>No comments.</td>
</tr>
</tbody>
</table>

**Proposal by the United States and Hong Kong**

| Article 4.2 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 4.2 See new Articles 6 (Consultations) and 7 (Dispute Settlement) below. | Article 4.2 No comments. |
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PRESENT CODE: PROPOSAL BY THE UNITED STATES AND HONG KONG

COMMENTS

New Article 5 - Notification

Article 5.1
1. Parties which institute licensing procedures or changes in these procedures shall notify the Committee of such within thirty days of publication.

Article 5.2
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;

COMMENTS

One delegation considered thirty days too short a period.

One delegation has noted that the majority of countries using import licensing procedures are developing countries for whom these notification requirements, amounting to notifications of the whole import policy regime, would represent a considerable additional burden. In reply, it has been said that the GATT Questionnaire on Import Licensing Procedures already requires much information and notification was not intended to be an administrative burden, nor to duplicate the level of detail of the Questionnaire. It was intended to provide the essential information.
necessary to allow contracting parties to understand enough about the licensing procedures to be able to monitor implementation of the Code, and to provide the necessary information to traders. The relation between new Article 5.2 and Article 1.4 was also taken up. In reply, to a concern expressed about too burdensome notification requirements, the drafters agreed that it might be enough to file a copy of the Official Gazette in question. The drafters noted that (e) was taken out of Article 2:2(b) of the present Code, and was intended to make the Code more operational, for a government to raise a question if it believed the purpose of an automatic license had been changed. This might help the implementing country in eliminating unnecessary and unintended obstacles. Four delegations supported the proposal. Two delegations considered it a duplication of the Questionnaire and Article 5.2.
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<tr>
<td>(f)</td>
<td>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</td>
<td>The drafters felt strongly that Article 5.2(f) was necessary for transparency reasons and in order to make Article 3.2 operational &quot;GATT basis&quot; was already required to be notified in the &quot;QR Survey.&quot; One delegation, supported by five other delegations, held that this fact made it a duplication to notify the basis under this Code, which was not the right place for such a notification. Some delegations have added that any party who has difficulty with the GATT basis for another country's measure should address this in the right forum, but not in the context of import licensing procedures. Four delegations supported the proposed new Article 5.2(f)</td>
</tr>
<tr>
<td>(g)</td>
<td>expected duration of the measure and licensing procedure or reason why this information cannot be provided.</td>
<td></td>
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</table>
Article 5.3

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.

One delegation proposed the following: "If a Party to this 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 seek information on such measures bilaterally from the Party concerned. The first Party may also bring this failure to the attention of the Committee, if the first Party could not get satisfactory information." It noted that this was based on paragraph 3 of the 1979 Decision on Notification, Consultation, Dispute Settlement and Surveillance (BISD 26 S/210).

Two delegations stressed the importance of "multilateral transparency."
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COMMENTS

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 Articles 6 (Consultation) and 7 (Dispute Settlement)

No comments.

Article 5.5: 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.

New Article 8.1 - Review (formerly Article 5.5)

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.

New Article 8.1 - Review (formerly Article 5.5)

One delegation accepted the proposal in a spirit of compromise. The following words seemed generally acceptable to delegations who spoke: "...objectives thereof and the rights and obligations contained therein." However, one delegation stated that further changes might be needed and that one would have to come back to the whole of Article 8.
Agreement on Import Licensing Procedures

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**Article 8.2**

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.

**Article 8.2**

One delegation has asked if "licensing regime" referred to procedure or substance. One sponsor has said it meant the totality of procedures and practices, not the substantive measures of which the procedures were an expression. One delegation said this should be stated specifically in the text itself. Another delegation said that this concern would be taken into account if the Code itself was limited to procedures. One delegation proposed the following language: "In conducting its review, the committee shall examine the licensing regimes of each signatory in light of the principles and obligations of this Agreement." One delegation stated that the language of Article 8.2 could only be discussed after the language of Article 3.2, 3.3 and 3.4 was clear. The
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<tr>
<td></td>
<td>sponsors said that they would be amenable to deleting the words after the last comma. The have stressed that it was not their intention to allow the Committee to “pass judgement” but only to improve the weak language of the Review provision and make this Code similar to others.</td>
<td></td>
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</table>

**Article 8.3**

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

One delegation asked for a clarification of the relationship between Art.8.3 and new Art.9.6. Sponsors said that Article 9.6 was a mechanical provision that spelled out how to amend the Agreement, if so decided. Article 8.3 simply made clear that in the biannual reviews, one of the matters that could be discussed was the adequacy of the Agreement. One delegation added that it saw Article 8.3 as dealing with the present functioning of the Agreement and 9.6 with future performance. One delegation stated that it accepted this proposal in a spirit of compromise.
**Agreement on Import Licensing Procedures**

**Article 8.4**

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.

**Comments**

One delegation did not see a need for a Secretariat report and questioned what purpose it would serve given the existence of replies to the licensing questionnaire and the opportunity for discussion provided under the TPRM and BOP Committee. A sponsor noted that a review provision is common to many or most Codes and that this Code had a great potential for increased transparency and improvement in this regard; most of the burden would fall on the Secretariat rather than on the delegations. The sort of information produced by reviews would be most helpful to small, developing country delegations who might lack resources to conduct such reviews on their own. One delegation stated that it had difficulties with this provision. One delegation said that, as a result of its own above-mentioned amendment to Article 5.3, the work "cross-notification," should be deleted.
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**Article 8.5**
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.

One delegation stated that it did not see a need for this provision. Another delegation also said that it had difficulties with it.

**Article 8.6**
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.

One delegation stated that it had difficulties with this provision.
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<th>Article 5: Final provisions</th>
<th>Article 9 (formerly Article 5)</th>
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<tr>
<td>Article 5.1: Acceptance and accession</td>
<td>Article 9.1: Acceptance and accession (formerly Article 5.1)</td>
<td>Article 9.1: Acceptance and accession (formerly Article 5.1)</td>
</tr>
<tr>
<td>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;</td>
<td>(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;</td>
<td>No comments.</td>
</tr>
<tr>
<td>(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;</td>
<td>(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;</td>
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(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

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

No comments.
### Agreement on Import Licensing Procedures

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<th>Article 9.3: Entry into Force (formerly Article 5.3)</th>
<th>Article 9.3: Entry into Force (formerly Article 5.3)</th>
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<tr>
<td>This Agreement shall enter into force on 1 January 1980 for the governments (footnote: For the purpose of this Agreement, the term &quot;governments&quot; 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.</td>
<td>No comments.</td>
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</table>

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**Article 5.4: 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.

### 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, 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 5.5: Review (see above)**
Agreement on Import Licensing Procedures

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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 9.6: 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.

Article 9.7: 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.

No comments.

Article 9.7: Withdrawal

No comments.