At its May 1977 meeting at technical level, the Sub-Group "Quantitative Restrictions" requested the secretariat to establish a document which would indicate the relationship between the relevant provisions of the GATT, especially Articles VIII and XIII, and the draft texts elaborated by the Committee on Trade in Industrial Products on Automatic Import Licensing (Annex I) and on Licensing to Administer Import Restrictions (Annex II). This note has been circulated in response to this request.

The GATT Articles and interpretative notes which have an indirect bearing on the draft text have been put into square brackets.
ANNEX I

Automatic Import Licensing

1. Automatic import licensing is defined as licensing which is not used to administer import restrictions such as those employed pursuant to the relevant provisions of *inter alia* Articles XI, XII, XVII, XVIII, XIX, XX and XXI of the General Agreement and when foreign exchange is granted automatically. The term "automatic licensing" covers technical visa requirements, surveillance systems, exchange formalities related to imports, and other administrative reviews of an equivalent kind effected as a prior condition for entry of imports.

2. Alternative I

Automatic licensing systems, No automatic licensing where required, shall not be used to restrict imports. Such systems shall be governed by the provisions of the General Agreement, in particular Article VIII, the need to carry out

Alternative II

shall be required for the importation of goods after .... However, during the interim period, in special cases justified by need to carry out

RELEVANT GATT PROVISIONS

Article VIII, paragraph 1(c)

The contracting parties ... recognize the need for minimizing the incidence and complexity of import and export formalities ....

Article XX

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail,

1Some members of the Sub-Group have stated that their use of automatic import licensing systems is related to some of the considerations contained in Article XX(a)-(j).
Alternative I
and be subject to the
provisions set out in
paragraphs 3-10 below.

Alternative II
certain administrative
controls which could not
be made in a more
appropriate way, a
system of automatic
licensing may be applied
subject to the
following provisions.

or a disguised restriction on international trade,
nothing in this Agreement shall be construed to
prevent the adoption or enforcement by any contracting
party of measures:

(a) necessary to protect public morals;
(b) necessary to protect human, animal or plant life
or health;
(c) relating to the importation or exportation of
gold or silver;
(d) necessary to secure compliance with laws or
regulations which are not inconsistent with the
provisions of this Agreement, including those
relating to customs enforcement, the enforcement
of monopolies operated under paragraph 4 of
Article II and Article XVII, the protection of
patents, trade marks and copyrights, and the
prevention of deceptive practices;
(e) relating to the products of prison labour;
(f) imposed for the protection of national treasures
of artistic, historic or archaeological value;
(g) relating to the conservation of exhaustible
natural resources if such measures are made
effective in conjunction with restrictions on
domestic production or consumption;
(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.
3. The rules governing presentation of applications for automatic licences and the lists of products subject to automatic licensing shall be published, with a specific indication as to the purpose and character of the system and in such a manner as to enable governments and traders to become acquainted with them. Any changes in either the rules governing automatic licensing or the lists of products subject to automatic licensing shall also be promptly published in the same manner.

Article X paragraphs 1 and 2

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting 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.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.
5. All persons, firms and institutions which fulfil the legal requirements for engaging in import operations involving products subject to automatic licensing shall be equally eligible to apply for and to obtain licences.

6. Application forms shall be as simple as possible. No document shall be required on application other than a pro forma invoice or, where strictly indispensable, other documents necessary to determine the nature and composition of the product.

Article I paragraph 1

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connexion with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

Article VIII paragraph 1(e)

The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.
7. No application shall be refused for minor errors in documentation easily rectifiable.

8. The applicant shall have to approach only one administrative organ for a licence.

9. Applications for licences may be submitted at any time.

10. Applications for licences shall be granted immediately on receipt or if this is not administratively feasible within a maximum of five working days from the date of receipt of the application.

Ad Article VIII

2. It would be consistent with paragraph 1 if, on the importation of products from the territory of a contracting party into the territory of another contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable.

Article VIII paragraph 3

No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.
ANNEX II

Licensing to Administer Import Restrictions

Licensing procedures adopted and practices applied for the issue of licences for administration of import restrictions may, in some cases, have additional restrictive effects on imports. The following provisions shall accordingly apply when a licensing system is used for the administration of quotas and other import restrictions.

1. Licensing systems to administer import restrictions shall not be designed nor operated in such a manner as to prohibit imports from certain sources or discriminate between sources of imports, unless otherwise permitted under the General Agreement.

RELEVANT GATT PROVISIONS

Article I, paragraph 1

With respect to customs duties and charges of any kind imposed on or in connexion with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connexion with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.
2. The foreign exchange necessary for the payment of imports subject to licensing shall, where required, be made available to import licence holders on the same basis as to importers of goods that do not require import licences.

/Article XIII, paragraph 1/

No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted./

/As regards "unless otherwise permitted under the General Agreement", attention is invited to the following Articles: XIV, XX, XXI, XXV, XXXV./

Article XV, paragraph 4

Contracting parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.

Ad Article XV, paragraph 4

... Another example would be that of a contracting party which specifies on an import licence the country from which the goods may be imported for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls.
Information and publication

3. All useful information concerning formalities for filing applications for licenses shall be published by the government which imposes or maintains the licensing requirement, as far in advance as possible of any opening date for submission of applications for licenses.

Article X, paragraphs 1 and 2

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party, shall also be published. The provisions of this paragraph shall not require any contracting 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.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.
4. All relevant information shall be provided to governmental authorities, upon their request, concerning the administration of import restrictions, the import licences granted over a recent period, and the distribution of such licences among supplying countries, including wherever possible names of importing enterprises on a confidential basis.

Article XIII, paragraph 3(a)

In cases in which import licences are issued in connexion with import restrictions, the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; Provided that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

Article XXI(a)

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests ...

Article X, paragraph 1

... The provisions of this paragraph shall not require any contracting 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.
5. In the case of licences for import restrictions involving fixed quotas the overall amount of quotas, by quantity or value, including revisions during the quota period, of goods that could be imported during that specified period, dates of opening of quotas and, where applicable, the amount allocated by country, shall be published.

Article XIII, paragraph 3(b)

In the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value...

Article XI, paragraph 2(c)

... Any contracting party applying restrictions on the importation of any product pursuant to subparagraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value...

Procedure for licence applications and distribution of licences

6. Any person, firm or institution which fulfils the legal requirements shall, to the extent possible, having regard to the provisions of paragraph 14 below, be equally eligible to apply for licences and to get their applications considered accordingly.

7. A reasonable period shall be allowed for submission of applications for licences.
8. Application forms and procedures for application and, where applicable, renewal shall be as simple as possible.

9. The period for processing of applications shall be as short as possible.

10. In the event of refusal of an application, the applicant shall be given on request the reasons for such refusal and shall have the right of appeal.

Article VIII, paragraph 1(c)

The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.*

Ad Article VIII

2. It would be consistent with paragraph 1 if, on the importation of products from the territory of a contracting party into the territory of another contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable.]

Article X, paragraph 3(b)

Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.
11. The validity of the licence shall be of reasonable duration, and in no case, except in special cases where imports are necessary to meet unforeseen short-term requirements, so short as to prevent imports from countries situated at a distance, taking into account transport and communications conditions.

12. When administering quotas, the authorities of the importing country shall take all possible steps to ensure that licences will be issued and importation can be effected within the period prescribed for this purpose and to facilitate the full utilization of the quotas.

13. The administrative authority issuing the licence shall take into account inter alia whether licences issued to the applicant in previous periods have been utilized or not.

Article XIII, paragraph 2(d)

... No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.
14. Licences should not be issued to importers for goods in such small quantities as to make imports uneconomical and, so far as consistent with this, should not be allocated to an unduly small number of importers.

15. Consideration shall be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for goods in economic quantities.

Article XIII, paragraph 2(d)

... No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

Article XIII, paragraph 2

In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions ... .

Article XIII, paragraph 2(d)

... The contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product ... .
16. In the case of quotas administered through licences which are not allocated among supplying countries, licence holders shall be free to choose the sources of imports.

Article XIII, paragraph 2(c)

Contracting parties shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source ...

Article XXI(c)

Nothing in this Agreement shall be construed ...

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

17. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries from which imports must be made.

18. Imports of goods under restrictions should, wherever practicable, be allowed on the basis of normal customs procedures, or in accordance with procedures worked out in agreement between exporting and importing countries, on the basis of export permits issued by the exporting countries.
19. Where export permits are issued by exporting countries according to a procedure worked out in common agreement with an importing country, but where the importing country for certain purposes requires import licences, the latter shall be issued automatically, within the limit of the quotas, in accordance where appropriate with the provisions of Annex I.