GENERAL AGREEMENT ON
TARIFFS AND TRADE

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"
Sub-Group "Quantitative Restrictions"

IMPORT LICENSING PROCEDURES

Note by the Secretariat

Revision

At its July 1977 meeting the Sub-Group "Quantitative Restrictions" requested the secretariat (MTN/NTM/34, paragraph 12) to revise the document MTN/NTM/W/104 in such a way as to indicate the relationship between the relevant provisions of the GATT, especially Articles VIII and XIII, and the draft texts contained in the feasibility study by the secretariat on Automatic Import Licensing (MTN/NTM/W/111) and on Licensing to Administer Import Restrictions (MTN/NTM/W/103). This note is 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.

RELEVANT GATT PROVISIONS

ANNEX I

Automatic Import Licensing

1. Automatic import licensing is defined as a requirement to submit to the relevant authority prior to clearance of the products an application to import products, the approval of which and the necessary foreign exchange is automatically granted. Such licensing may not be 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/. 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. /No automatic licensing shall be required for the importation of goods after ... However, during the interim period/ automatic licensing systems, where required, /in special cases justified by the need to carry out certain administrative controls which could not be made in a more appropriate way/ shall not be administered in a manner so as to have trade-restricting effect /and shall be removed as soon as the circumstances which gave rise to their introduction no longer prevail./ Such systems shall /be governed by the provisions of the General Agreement, in particular Article VIII and/ be subject to the following 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[1]

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,

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[1]Some 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).

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 application for automatic licences and the lists of products subject to automatic licensing shall be promptly 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 list 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.

4. /Automatic licensing system shall not be designed nor operated in such a manner as to discriminate between sources of imports./

5. All persons, firms and institutions which fulfil the legal requirements /of each country/ 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/s/ shall be required on application other than /a pro forma invoice/ /those required for normal customs purposes/ or, where strictly indispensable, other documents necessary to determine the /value, quantity/ 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 connection 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(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.*

7. No application shall be refused for minor errors in documentation easily rectifiable.

8. The applicant for a licence shall have to approach only one /administrative/ /competent/ organ /previously specified in the applicable rules referred to in paragraph 3 above/. /If in exceptional cases some other organs are to be approached then their number should be limited as far as possible./

9. Applications for licences may be submitted at any time /but/ /before the date of/ /no later than seven days after/ /the placement of a firm order/ /and/ in no event later than the date of shipment of any of the goods involved.

10. Applications for licences when submitted in appropriate and complete form shall be granted /to the extent administratively feasible/ immediately on receipt /or/ /within the shortest possible delay of time/.

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 prcduction 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.

/11. Each contracting party shall, upon request, afford sympathetic consideration to and afford opportunity for prompt consultation with regard to any matter related to automatic import licensing. If no satisfactory solution of the matter has been reached within the sixty days, the matter may be brought before the CONTRACTING PARTIES./7

Article XXII

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

ANNEX II

RELEVANT GATT PROVISIONS

Licensing to Administer Import Restrictions

1. Licensing procedures adopted and practices applied for the issue of licences for administration of quotas and other import restrictions may, in some cases, have additional restrictive effects. The following provisions shall accordingly apply to such procedures and practices /without prejudice to the rights and obligations of the General Agreement/ /and taking into account the legitimate economic development purposes and financial needs of developing countries/.

/2. 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./

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.

3. The foreign exchange necessary to pay for imports subject to licensing shall /where required/ be made available to licence holders on the same basis as to importers of goods not requiring licences or goods subject to automatic licensing.

/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.

4. All /useful/ information concerning procedures for filing licence applications /and concerning the eligibility of persons, firms and institutions to make such applications/ shall be published by the government issuing the licence as far in advance as possible of opening dates for submission of licence application.

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. Governments issuing licences shall provide, upon /the/ request /of any adherent to this code/ all relevant information concerning /the administration of the restrictions/, the import licences granted over a recent period /and where applicable/ distribution* of such licences among supplying countries and where applicable the distribution* among customs union members /and, wherever agreed to by importing enterprises, the names of those enterprises/.

Article XIII, paragraph 3(a)

In cases in which import licences are issued in connection 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.

*It was also proposed to use "utilization" instead of "distribution".

6. Governments issuing licences to administer /fixed/ quotas shall /as far as practicable/ publish the overall amount of quotas by quantity or value, opening and closing dates of quotas, /where applicable, the amount allocated by country/ and revisions /affecting the goods imported/ during the quota period.

7. Any person, firm or institution /which fulfils the legal requirements/ /of the importing country/ shall /to the extent possible/ /having regard to the provisions of paragraph 14 below/ be equally eligible to apply and be considered for a licence. If the licence application is refused, the applicant shall, on request, be given the reasons for such refusal and shall have a right of appeal. /In exceptional cases, e.g. in the interest of public security, the reasons may be withheld./

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 sub-paragraph (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 .../.

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.

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

8. 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 /value, quantity,/ nature and composition of product./

9. Application and, where applicable, renewal procedures shall be as simple as possible. Applicants /shall have to approach only one administrative organ for a licence and/ shall be allowed a reasonable period to submit applications.

10. The period for processing of applications shall be as short as possible /and applications with easily rectifiable errors shall not be refused/.

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.

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./

11. /The validity of the licence shall be of reasonable duration/ /The period of licence validity shall allow suppliers to receive, process, ship and receive payment for import/ and shall not preclude imports from distant sources /taking into account transport and communications conditions/ except in special cases where imports are necessary to meet unforeseen short-term requirements.

12. /When administering quotas, the authorities of the importing country/ /Governments issuing licences/ 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 /wherever for reasons of economic policy, the conditions under which the quotas under reference were established remain in existence, in the opinion of the governments which established those quotas/.

13. Governments issuing licences /shall/ /may/ take into account inter alia whether licences issued to the applicant in previous periods have been utilized or not /for which purpose they may require the production of the appropriate evidence/.

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(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 /except in the case of developing countries who may want to keep socio-economical objectives in view in allocating quotas/.

15. /Consideration shall be given to ensuring/ /There shall be/ a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for goods in economic quantities /and also the rights of traditional importers especially where quotas are applied for emergency protection purposes./

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(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 XIII, paragraph 2(d)

... /T/he 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 ... .

/In the distribution of licences developed countries should reserve a substantial share to new importers, in the case of new products originating in developing countries; in addition, they should authorize a large number of licences for traditional imports originating in developing countries./

Article XXXVII, paragraph 1(a) and (b)

1. The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible - give effect to the following provisions:

(a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;

(b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties ... .

Article XXXVII, paragraph 3(c)

3. The developed contracting parties shall...

(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

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 /with exception of supplying countries with which no trade relations are maintained/.

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/ /import permits issued by importing countries/ 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.

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.

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/ /import restriction/, in accordance where appropriate with the provisions of Annex I.

20. /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./

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.