

1	ARTICLE 3	1
1.1	Text of Article 3	1
1.2	Relationship with other WTO Agreements	3
1.2.1	Concurrent claims under the GATT 1994, the Agreement on Agriculture and Article 3 of the Import Licensing Agreement	3
1.3	Article 3.2	4
1.4	Article 3.5(a)	5
1.5	Article 3.5(h)	6
1.6	Article 3.5(i)	6
1.7	Article 3.5(j)	6

1 ARTICLE 3

1.1 Text of Article 3

Article 3

Non - Automatic Import Licensing

1. The following provisions, in addition to those in paragraphs 1 through 11 of Article 1, shall apply to non-automatic import licensing procedures. Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in paragraph 1 of Article 2.

2. Non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond to those of automatic licensing procedures. Non-automatic licensing procedures shall be no more administratively burdensome than absolutely necessary to administer the measure.

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licences.

4. Where a Member provides the possibility for persons, firms or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information:

- (i) the administration of the restrictions;
- (ii) the import licences granted over a recent period;
- (iii) the distribution of such licences among supplying countries;
- (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account;

(b) Members 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

(l) in applying paragraph 8 of Article 1, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

1.2 Relationship with other WTO Agreements

1.2.1 Concurrent claims under the GATT 1994, the Agreement on Agriculture and Article 3 of the Import Licensing Agreement

1. In *Canada – Dairy*, the Panel addressed the United States' claim that Canada was in violation of Article II of the GATT 1994 and Article 3 of the Licensing Agreement because it restricted access to tariff quotas to certain cross-border imports by Canadians. Having found that the restriction was inconsistent with Article II:1(b) of the GATT 1994, the Panel did not find it necessary to examine whether in so doing, Canada also violated Article 3 of the Licensing Agreement.¹

2. Similarly, the Panel in *Turkey – Rice* did not find it necessary to examine claims under Articles 3.5(a), 5.1, 5.2, 5.3 and 5.4 of the Agreement, as it had found that

First, we note that Article XI:1 of the GATT 1994 imposes a substantive obligation on Members to refrain from imposing prohibitions or restrictions on the importation or the exportation of goods. In contrast, Article 3.2 of the Import Licensing Agreement deals with the administration of import licensing procedures. Regarding which of these provisions is *lex specialis*, previous panels have considered that provisions of the covered agreement that deal with the substantive content of a measure, such as Article XI:1 of the GATT 1994, are more specific than those that deal with the application and administration of a measure, such as Article 3.2 of the Import Licensing Agreement. These panels reached this conclusion when confronted with claims under these two provisions. ⁶

5. The Panel distinguished this situation from the situation that arose in EC – Bananas III, and noted that the Appellate Body's pronouncement in the latter case concerned the relationship between two claims regarding the administration of measures, and not their substantive content:

"Second, we note that the Appellate Body in EC – Bananas III referred to the decision of the panel in that dispute to begin its analysis of the claims raised by the complainants under Article X:3(a) of the GATT 1994 before assessing those raised under the Import Licensing Agreement. The Appellate Body observed that 'the Panel, in our view, should have applied the Licensing Agreement first, since this agreement deals specifically, and in detail, with the administration of import licensing procedures'. We consider the situation in that dispute to be different from the one before us. In EC – Bananas III, the Appellate Body was confronted with a situation where the complainants raised claims under provisions that govern the administration and application of measures, rather than their substantive content. In particular, the Appellate Body dealt with claims under Articles X:3(a) of the GATT 1994 and 1.3 of the Import Licensing Agreement. We are examining a different situation. Brazil has raised claims under

Article 3.5(a)(iii) or (iv) of the Licensing Agreement . In the light of the existence of express provisions in Article 3.5(a) of the Licensing Agreement relating to transparency on which the Panel did in fact make findings, we do not believe that the Panel erred by refraining from examining Brazil's 'comprehensive' claim relating to a general principle of transparency purportedly underlying the Licensing Agreement." 14

1.5 Article 3.5(h)

11. In EC – Poultry , Brazil claimed that speculation in licences discouraged full utilization of the poultry TRQ in violation of Articles 3.5(h) and 3.5(j). The European Communities responded that licences awarded under the regulation at issue were non-transferable, so as to avoid such speculation. The Panel rejected Brazil's claim:

"While it may be true that Brazilian exporters have had additional difficulties in exporting to the EC market due to the speculation in licences, we note that the licences allocated to imports from Brazil have been fully utilized. In other words, the speculation