

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

LIC/W/51

8 January 1990

Special Distribution

Committee on Import Licensing

DRAFT MINUTES OF THE MEETING HELD
ON 23 NOVEMBER 1989

Chairman: Mr. R. Molloy

1. The Committee held its twenty-fifth meeting on 23 November 1989. The agenda contained in GATT/AIR/2877 was adopted.

A. Information available on Import Licensing

2. The Chairman reported that since the last meeting publications containing information on import licensing procedures had been provided by Canada and New Zealand (LIC/3/23). New replies to the Import Licensing Questionnaire in the L/5640 series had been provided by Argentina (Add.27/Corr.3), Australia (Add.13/Rev.4), the Benelux countries (Add.21/Rev.2), Finland (Add.6/Rev.1/Suppl.1), Norway (Add.2/Rev.1), Romania (Add.32/Suppl.1), South Africa (Add.17/Rev.3), Sweden (Add.14/Rev.3), and Switzerland (Add.19/Rev.1).

3. The Committee took note of the information provided.

4. The Chairman noted that publications containing information on import licensing procedures and a new reply to the Import Licensing Questionnaire had been received shortly before the meeting from the United States (LIC/3/24 and L/5640/Add.40/Rev.1). He said that these would be taken up at the Committee's next meeting along with any further notifications received.

B. Fifth Biennial Review of the Implementation and Operation of the Agreement

5. The Committee conducted the fifth biennial review of the Agreement. It was agreed that a corrigendum to the basic document (LIC/16) would be issued incorporating additions and corrections suggested at the meeting (LIC/16/Corr.1).

C. Relationship of the Committee's Work to the Uruguay Round

6. The Chairman noted that a revision to the joint proposal by Hong Kong and the United States for improving the Agreement had been circulated to participants in the Negotiating Group on MTN Agreements and Arrangements and to members of the Committee (LIC/W/49/Rev.1). He invited the delegations of Hong Kong and the United States to inform the Committee of the revisions that had been made to the original proposal, and then invited other delegations to make comments on the revised proposal.

7. The representatives of Hong Kong and the United States said that following the constructive comments that had been made by other delegations on the original proposal, revisions had been made as follows:

Article 1.1: insert "used for the operation of import licensing régimes" directly after the phrase in parentheses. This had been inadvertently omitted in the original proposal.

Article 1.4: "take ... into account" had been replaced by "give due consideration to" in the second paragraph. This was intended to modify to a best endeavour the obligation of one Party to make changes in its import licensing procedures following discussions of the comments of another Party.

- "absolutely" had been introduced before the word "necessary" in order to tighten the provisions somewhat.

Article 3.4: two sentences had been added to the end of this new article. These had the effect of reducing the period from 30 to 14 days for ex post notification of the granting of exceptions to licensing requirements, and of requiring an explanation of why prior notification had not been possible. They were intended to strengthen discipline in this area, as well as to establish a notification requirement since not only traders but also governments would have an interest in examining how Parties were implementing the Agreement with regard to exceptions.

Article 8.2: reference to the General Agreement had been removed. While it was still felt that it was not always possible to separate procedures from measures, and that the existing Agreement did not always make such a distinction, the change was intended to remove the suggestion that the Committee should pass judgement on import licensing measures per se.

Finally, they noted that a number of the comments made by other participants on the original proposal had not been incorporated in the revised proposal. This was not because they disagreed necessarily with those comments, but because they did not feel themselves in a position to provide precise language covering them. They hoped that other delegations would be forthcoming with necessary language to cover their particular proposals.

8. The representative of the European Communities welcomed the revisions as going in the right direction. The revision to the language in Article 1.4 was a net improvement. Despite the additions to Article 3.4, his delegation continued to believe that this Article would cause more problems than it would solve. Exceptions, by definition, could not be foreseen, and it was therefore very difficult to identify in advance how to deal with them. It would be preferable to leave room for flexibility in national licensing régimes to cope with exceptions rather than to try to tie them down through provisions in the Agreement. He welcomed the removal of reference to the General Agreement from Article 8.2. However, he noted that a similar reference remained in Article 5.2(f) and reiterated his

delegation's view that the Agreement should not intrude into the issue of the GATT legality of the measure being administered, but rather should ensure that the means of administration did not add restrictive elements. Regarding other comments made by his delegation which had not been taken into account, he looked forward to further development of the proposal which would make it more practical, reasonable and focused on matters that the Agreement should deal with.

9. The representative of Chile welcomed the amendment made to Article 1.4, but reserved his delegation's right to comment further on this provision.

10. The representative of the Nordic countries welcomed the fact that comments by other delegations had been taken into account to a large extent in the revised proposal, and said that this could help to bring about valuable improvements to the Agreement. The revisions had tightened the purely technical aspects of the Agreement, making it clear that the Agreement dealt only with procedural aspects of import licensing. However, he reiterated his delegation's view that revisions to Article 5.2(f) and to two of the preambular paragraphs were needed. These could be addressed through informal drafting exercises carried out under the auspices of the Negotiating Group on MTN Agreements and Arrangements.

11. The representative of Canada welcomed the revisions and felt they reflected many of the comments made by other delegations. The drafting of Article 3.4 in the original proposal had been of particular concern because her delegation considered that it might not prove possible in all cases to declare the justification for granting exceptions in advance. She reserved her delegation's right to make further comments on the revisions that had been made to this article and on the revised proposal in general.

12. The representative of Japan said the revisions would contribute to discussion of the proposal. While reserving the right of his delegation to make further comments, he commented as follows:

Throughout; in the Preamble: qualifying "necessary" by the word "absolutely" was not needed. In the ninth paragraph of the Preamble, the word "absolutely" was not needed; each national authority determined itself whether non-automatic licensing was necessary or not.

Article 1.4: the procedure proposed in the second paragraph would result in making the job of licensing authorities administratively complex, and might prevent the expeditious implementation of licensing régimes.

- Regarding the third paragraph, it was reasonable to establish such an obligation with respect to the notification system in urgent situations.

Article 3.1: his delegation had no difficulty with the definition of non-automatic import licensing.

Article 3.3: his delegation understood the purpose to be to require Parties to ensure the transparency of their import licensing procedures by such means as publishing quotas for each country or each applicant, even in the case of small quotas.

Article 3.4: it was still not clear what exceptional circumstances referred to in this provision. In general, exceptional cases were established for the purpose of protecting human life, health, etc. as stipulated in Article XX and XXI of the GATT, but his delegation wished to know the concrete and precise criteria for them in relation to the Agreement.

Article 5: notification was useful for ensuring the transparency of licensing procedures, but the system of notification should be simple so that it did not impose a heavy administrative burden on the licensi. g

authorities. In this context, the items listed in Article 5.2 needed further examination.

Article 8: his delegation could accept the system of Review as such, but felt it would be useful to determine the scope, coverage and other details by considering similar systems in other MTN Codes. The matter covered by Article 8.2 should be left to dispute settlement. Also, the mechanism for Review covered by Article 8 should be set up so as to allow a Party with an interest in supplying a product first to request another Party to notify its import licensing procedures on its own initiative and responsibility. Parties could then effectively collect information on import licensing procedures themselves.

13. The representative of Australia reserved his delegation's right to make detailed comments at a later stage. However, the proposal was a good basis for negotiation. His delegation shared the view of a number of others that the Agreement should not be pushed away from procedural towards policy matters, and welcomed acknowledgement by the representatives of Hong Kong and the United States of the concerns of others in this regard.

14. Replying to some of the comments made, the representative of the United States said that the word "absolutely" was included in the ninth paragraph of the Preamble in order to emphasize the importance of intent in the case of non-automatic import licensing, and said he would welcome further clarification from the delegation of Japan on the difficulty they had with this phrasing. He stated that he would be interested in any ideas other delegations might have on making the provisions of Article 3.4 more operational. It was important to ensure the transparency of exceptions. He noted there was continuing concern over Article 5.2(f), but stated that this was a very important provision in the view of his delegation and that the context of the provision had been made clear by revising Article 8.2; it was not intended that the Committee should judge the GATT legality of measures, but nothing was more important for the transparency of procedures than to identify the GATT basis for non-automatic licensing. Regarding the comment of the delegation of Japan on treating the matters covered by

Article 8.2 under dispute settlement, he emphasised that this provision was not intended to deal with individual controversies but to establish a framework for looking generally at documentation and information which it was being suggested should be provided.

15. The Chairman noted that in the French version of document LIC/W/49/Rev.1, Article 8.2 was incorrect in that the reference to the General Agreement had not been removed. He stated that this would be corrected. Summing up the discussion, he said there had been a general welcome for the revisions to the proposal that had been put forward by Hong Kong and the United States, but that some problems remained for some delegations. The Committee would revert to discussion of the proposal at its next meeting, and he would be available in the meantime for informal consultations with interested parties on how to advance work at that meeting.

D. Report (1989) to the CONTRACTING PARTIES

16. The Committee agreed on the text of its Report (1989) to the CONTRACTING PARTIES (L/6608).

E. Other Business

17. The date of the next regular meeting of the Committee was scheduled for 19 March 1990.