

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
LIC/W/71
17 November 1994
Special Distribution

(94-2436)

Committee on Import Licensing

DRAFT MINUTES OF THE MEETING HELD ON 3 NOVEMBER 1994

Chairman: Mr. M. Nakatomi (Japan)

1. The Committee held its thirty-fifth meeting on 3 November 1994.
2. The agenda contained in GATT/AIR/3633 was adopted.
- A. **Information Available on Import Licensing Procedures**
 3. The **Chairman** reported that since the last meeting replies to the Questionnaire had been received from Argentina (L/5640/Add.27/Rev.1), Australia (L/5640/Add.13/Rev.8), Austria (L/5640/Add.35/Rev.2), India (L/5640/Add.7/Rev.6), Norway (L/5640/Add.2/Rev.4/Suppl.1), South Africa (L/5640/Add.17/Rev.4/Suppl.2) and the United States (L/5640/Add.40/Rev.4). Updated replies had also been received from Hong Kong, which would be circulated as document L/5640/Add.36/Rev.8. In addition, the delegation of Switzerland had informed the Secretariat that its authorities had introduced modifications to the import licensing system to further liberalize the licensing requirements for wine, details of which would be notified in the form of revised replies to the Questionnaire, as soon as possible. The Chairman also drew attention to the publications received by the Secretariat from Hong Kong and the United States, listed in LIC/3/Add.40.
 4. The representative of **India** informed the Committee that since the replies to the GATT Questionnaire mentioned above had been submitted, his Government had lifted the restrictions on trade with South Africa in view of the recent developments in that country, and requested the information appearing in the document to be corrected as necessary to reflect this change.
 5. The Committee **took note** of the information provided.
- B. **European Communities' Licensing Practices for Bananas**
 6. The representative of the **United States** said that the United States continued to be dismayed that the European Union had not eliminated the discriminatory aspects of its import licensing regime for bananas. She also noted that the European Union had failed to notify this regime to the Committee on Import Licensing. As the Committee was aware, the entire banana import regime based on EC Regulation 404 was the subject of a dispute settlement panel. Regrettably, the European Union had refused to adopt the Panel report or to correct the GATT-inconsistent aspects of its banana regime. The regime was, in all its aspects, clearly discriminatory. Unquestionably, the most egregious and injurious feature was its discriminatory licensing system. The European Union through the licensing regime had chosen to allocate its quota for third-country bananas (mostly bananas from Latin America) in a way which arbitrarily granted almost a third of the licences to European Union firms with little or no history of importing Latin American bananas. The European Union had been quite open, in fact, about its intent to benefit European Union firms at the expense of non-European Union firms. In a filing before the European Court of Justice, for example, the European Union had stated that the licensing regime was "intended to strengthen the competitive position of operators who had previously marketed Community or ACP bananas, vis-a-vis their competitors who had previously marketed Latin

American bananas...". Whatever the European Union's motivation in adopting this licensing system, it was clear that the system was inconsistent with GATT principles, the GATT Panel which had examined the licensing regime had found it to violate both the MFN requirements of Article I and the national treatment requirements of Article III.

7. Moreover, it appeared to the United States that the European Union's licensing regime for bananas was also clearly inconsistent with its obligations under the GATT Agreement on Import Licensing Procedures. It was interesting to contrast the licensing regime it had put in place for imports of so-called third-country (most Latin American) bananas with its licensing system for banana imports from traditional ACP suppliers. Any firm which had historically purchased ACP bananas received automatic licensing entitlement to continue to import that fruit upon simple presentation of proof of origin (e.g., bills of lading). The non-restrictive, automatic licensing system applicable to traditional ACP importers was the very type of system encouraged by international accords. Although the European Union could have chosen an equally non-restrictive licensing system for third-country fruit, it chose not to do so and instead instituted its GATT-illegal system. The United States also noted that the so-called Framework Agreement which the European Union had concluded with selected Latin American countries after the GATT Panel report was issued did nothing to bring the banana import licensing system into conformity with GATT requirements. In fact, the Framework Agreement created a situation in which the Latin American signatories were permitted to put in place an additional layer of potentially discriminatory licensing. Under such a system, the Latin American signatories would have the opportunity to create a system in which non-European Union firms would be required to purchase or otherwise obtain certificates for banana exports. Without such certificates, non-European Union firms would not receive import licences from the European Union. European Union firms (so-called category B operators) would apparently be exempt from such licensing requirement. As a signatory to the Licensing Code and as a GATT member, the United States strongly believed that a licensing system consistent with both GATT and Code obligations was possible and necessary. The licensing system that was part of the banana regime was blatant in its discrimination and was totally contrary to both the letter and the spirit of the Licensing Code. It appeared that the regime was clearly inconsistent with a number of provisions of the Code. For example, Article 3(a) of the Code stated that licensing procedures adopted for the administration of quotas and other import restrictions shall not have trade-restrictive effects on imports beyond those caused by the imposition of the restriction; Article 1.3 of the Code stated that the rules for import licensing procedures shall be neutral in application.

8. The United States strongly believed that the European Union could meet its development commitments under the Lomé arrangement in ways that were consistent with GATT rules and disciplines. Interestingly, the European Court of Justice Advocate General had agreed, in an opinion issued in March 1994, that far less restrictive means could have been used to help ACP banana producers. The United States urged the European Union in the strongest possible terms to bring this regime into conformity with both the letter and the spirit of its obligations under the GATT.

9. The representative of the European Communities said that his delegation took note of the statement made by the United States. However, his delegation did not think it was a good idea to continue here in this forum the discussions which had been held time after time at meetings of the GATT Council concerning the Community banana regime. It was not clear to his delegation as to whether the United States referred to the new or the old regime. At present, it was still the old regime that was in place which had been the subject of a GATT dispute settlement panel. While the complaining parties had claimed that the system violated several GATT Articles, they had not stated that the regime applicable at present was not in conformity with the Licensing Code, and in particular with the provisions of Article 3 of the Code. The European Communities had read the Panel report carefully and had come to its own conclusions which had been made clear at several GATT Council meetings. The current import regime also consisted of an automatic licensing system. He did not see how that could in any event be inconsistent with the Licensing Code. On the other hand, any discussion at this stage on the new regime - the Framework Agreement under the WTO - to which the representative of the

United States certainly referred, was, in his view, totally premature as both the new regime and the WTO had not yet entered into force. His delegation was rather confident that the new regime also was in conformity with the new Agreement on Import Licensing Procedures. The European Communities had verified its conformity before the offer was made and before the Framework Agreement was set up. In any event, any discussion regarding the conformity of the Framework Agreement with the new Licensing Agreement would have to take place after the WTO had entered into force.

10. The representative of Australia said that she did not intend to participate in a repetition of debates in the GATT Council on this matter, but rather to respond to a couple of points of procedure concerning the statement by the representative of the European Communities. In her view, no matter what the issue or the product was, or whether or not it would have been discussed in the GATT Council, if the issue raised by a member of the Code concerned the import licensing system of another member or a group of members of the Code, it was appropriate and relevant that this could be discussed in this forum regardless of the question of transition between Agreements that the European Communities alluded to. The United States did make one important procedural point, i.e., the notification issue. It was important that this Committee and its successor body did have the opportunity to review with full transparency import licensing arrangements that were already in place as well as those that would come into place. It would not be helpful, in her view, to draw sharp lines around issues which had been the subject of GATT dispute settlement. Therefore, without referring to this specific issue or the country's perspective, she believed that it was relevant for a member to bring a matter relating to import licensing to this Committee at any time as the United States did.

11. The representative of Ecuador, speaking as an observer, said that his country was the world's biggest banana exporter and the Community the largest market; as Ecuador was its major supplier, he wished to clarify several points. He pointed out that about 60 per cent of banana exports from Ecuador was carried out by Ecuadorean exporters. Therefore, he was speaking on behalf of his own country's interest. In his view, the discriminatory import licensing regime of the European Union did not relate only to the Framework Agreement which may come into force next year. He supported the view of the United States delegation that under the banana regime which had been enforced by EC Regulation 404/93 and which had been declared incompatible with the GATT, 30 per cent of import licences were reserved for operators that had marketed ACP and Community bananas. In other words, aside from the ACP quota which was a separate quota, within the quota for third countries, there existed this 30 per cent reservation for operators who had marketed ACP and Community bananas. This implied that the Latin American exporters were paying about US\$9 per box of bananas in order to penetrate markets in which they in fact had always been present. The payment of US\$9 per box applied not only to Ecuadorean or other Latin American exporters but also to North American exporters. The concerns expressed by the United States delegation did not relate to something that was going to happen in the future, but to something that was already happening and which had cost Latin America as much as US\$200 million last year, thus raising unduly the price of bananas on the European Market and making the European consumer one more party that had suffered under this system.

12. The Committee took note of the statements made.

C. Report (1994) to the CONTRACTING PARTIES

13. The Committee agreed on the text of its Report (1994) to the CONTRACTING PARTIES (L/7556).

D. Other Business

14. The Committee agreed that the Chairman would consult with delegations regarding the date of the next meeting.