

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

LIC/W/44

30 September 1988

Special Distribution

Committee on Import Licensing

DRAFT MINUTES OF THE MEETING

HELD ON 12 SEPTEMBER 1988

Chairman: Mr. A.-H. Mamdouh

1. The Committee on Import Licensing held its twenty-second meeting on 12 September 1988.
2. The agenda contained in GATT/AIR/2660 was adopted.
 - A. Status of Signatories and Observers
 3. The Chairman reported that there had been no change in the status of signatories and observers since the last meeting.
 - B. Information available on Import Licensing Procedures
 4. The Committee took note of the information on publications received, circulated in documents LIC/3/Add.19 and 20.
 5. The Committee took note of revised replies to the GATT Questionnaire on Import Licensing Procedures received from Australia (L/5640/Add.13/Rev.3), Poland (L/5640/Add.39/Rev.1), Singapore (L/5640/Add.33/Rev.1) and Yugoslavia (L/5640/Add.20/Rev.2).
 - C. Implementation and Operation of the Agreement
 6. The Committee took note of a communication from the United States (LIC/15) advising the Committee that India and the United States had

reached a mutually satisfactory solution, outlined in the document, of their dispute concerning India's licensing procedures on imports of almonds, and that as a result the complaint by the United States against India under Article 4.2 of the Agreement (LIC/M/19 and LIC/14) had been withdrawn.

7. The representative of Chile, recalling the discussion in the previous meeting (LIC/M/21, paragraphs 15-19), noted that a Panel had been established by the GATT Council on 4 May 1988 concerning restrictions on apples introduced by the European Communities (C/158 and C/M/220). He stated that Chile continued to reserve all its rights under the Agreement in this case.

8. The representative of Romania called attention to a unilateral import measure notified to GATT by Finland in L/6342, under which mandatory import licensing on flat steel bars from Romania had been introduced pursuant to the safeguard provisions of Finland's long-term trade agreement with Romania. This measure had resulted in a freeze on imports of the product from Romania. He noted that a case of serious prejudice had not been established by Finland as required by the terms of Article 4 of Romania's Protocol of Accession to GATT (BISD 18S/7). He requested the Finnish representative, pursuant to Article 4.2 of the Agreement, to provide the Committee with clarification concerning the licensing régime to which Romanian flat steel bars were subject. In particular he sought information on the character (automatic or non-automatic) of the licensing régime and in the case of a non-automatic system, the level of the ceiling or quota and the criteria taken into consideration for its establishment.

9. The representative of Finland said that he would convey Romania's concerns to his authorities, and would provide a written reply to Romania and the Committee.

10. The Committee took note of the statements made.

D. Work Programme

11. The Committee again took up the question of the clarification of the term "import licensing" in Article 1.1. The representative of the European Communities said that his delegation was firmly attached to agreeing on such a clarification within the Committee's work programme. There was a clear distinction between automatic and non-automatic licensing: non-automatic licensing was an administrative procedure for the administration of a quantitative restriction. Any quantitative restriction required an administrative procedure, although this could take many different forms and need not necessarily involve paper transactions. The purpose for which a document or procedure was required was the key element: any document or procedure required as a prerequisite for importation under a quantitative restriction had all the characteristics of an import licence. While he was willing to examine other aspects of clarification of the terminology of the Article and of the Agreement as a whole, he attached primary importance to this question.

12. The representative of the United States supported the request for clarification of Article 1.1 terminology. Her delegation had given to the Secretariat the United States' reply to the informal questionnaire circulated in January 1988 concerning this matter. This reply included information concerning procedures used for statistical or monitoring purposes, in addition to import licensing. She emphasized that the information was supplied without prejudice to the United States' position on the inclusion of such practices in the scope of the Agreement. In addition, her delegation proposed that, with a view to clarifying other terms used in the Agreement, the Secretariat should investigate the drafting history of, and the interpretation, if any, given in the Agreement, in the General Agreement and in other Tokyo Round Agreements to the following terms:

- Article 1.8 - "minor variations in value, quantity or weight"
- 3(h) - "reasonable duration" (of licence validity)
- 3(j) and (l) - "economic quantities"
- 3(k) - "fully utilized" (in relation to import performance of licence applicants)
- 3(l) - "reasonable distribution" (of licences to new importers).

Once the preliminary work had been done it could be decided whether these aspects should be incorporated in the Committee's work programme.

13. The representative of the European Communities, while agreeing that clarification of such other terms would be useful, expressed his disappointment that no response had been made to his proposal. He stressed that the clarification of Article 1.1 had been part of the work programme for over two years. He had also proposed that the question of clarification of Article 1.1 should be brought to the Negotiating Group on MTN Agreements and Arrangements, and wondered whether that might not be the more appropriate forum for these discussions.

14. It was agreed that the discussion of "import licensing" in Article 1.1 would continue and that the Secretariat would also undertake the background work requested by the United States before the next Committee meeting.

E. Relationship of the Committee's work to the Uruguay Round

15. The Chairman called attention to the United States' proposal circulated in LIC/W/42, for improvements in the Agreement. This had also been circulated in the Negotiating Group on MTN Agreements and Arrangements. He recalled the preliminary discussion held at the last meeting (LIC/M/21, paragraphs 22 and 23).

16. The representative of the United States recalled that her delegation had tabled three papers on import licensing in the Committee, highlighting the need for procedural and substantive reform of the Agreement and

proposing ways to accomplish this end. Some delegations had questioned whether the trade distortions which the United States believed to result from the inappropriate or excessive use of import licensing were as serious as was maintained, while others had requested more detailed information. The United States' administration had circulated detailed questionnaires to the private sector, asking for indications of the types of licensing problems faced when selling abroad. The responses received indicated that exporters continued to face a wide variety of difficulties and substantial costs resulting from the licensing practices of a number of trading partners, including some signatories to the Agreement. The problems most frequently cited with reference to automatic licensing were administrative delays, short periods of validity, and the need to approach multiple ministries or Government agents. That these problems occurred among Code signatories was felt to be especially troublesome, since one of the goals of the Code was to eliminate such administrative barriers. With regard to non-automatic licensing, many of the same procedural barriers were also reported. Even more troubling, however, was the frequent mention of unannounced quota levels and unpredictable exceptions being made to quota levels. These practices were seen as particularly trade-distortive. The results of the survey confirmed the United States' belief that import licensing practices continue to be a significant barrier to trade, and that the Agreement should be amended to address these continuing trade distortions. The United States' objective was to encourage countries to minimize their overall use of licensing and to ensure that when used, licenses are administered in a transparent and predictable manner and on a non-discriminatory basis. Specifically the United States sought the inclusion in the Agreement of the recommendations for procedural reform made by the Committee in May 1987; the adoption of more specific definitions of licensing, including an elaboration of the terminology used in Article 1.1 of the Agreement; commitment to limit the overall use of licensing; agreement not to adopt or maintain licensing procedures to administer restrictions inconsistent with the General Agreement; agreement not to maintain non-automatic licensing procedures once the GATT justification for adopting the measure in question no longer applied; more specific disciplines on the use of non-automatic licensing; and

elaboration and strengthening of the transparency, notification, review and dispute settlement provisions of the Agreement. The United States was not seeking a new agreement on import licensing, but rather, to strengthen the provisions of the existing Agreement. She sought the views of other members of the Committee.

17. The representative of Japan recognized the use of improving and clarifying the existing Agreement. However he recalled that the Agreement was primarily a "procedural" Code, whose purpose was to ensure that licensing procedures did not represent additional trade restrictions. Questions related to import restrictions themselves should be discussed in other appropriate fora. Moreover, the usefulness of automatic import licensing for certain purposes should be recognized. Japan could not go along with the United States' proposal, to the extent that it did not take these points into account and that it appeared to change the scope and nature of the existing Agreement. He noted that questions of GATT justification for licensing practices and reduction or elimination of the use of licensing, as well as the review procedures proposed by the United States, were under discussion in other fora, such as the Negotiating Group on Non-Tariff Measures. He asked for clarification of a number of points, including the meaning of "discretionary licensing"; the difference between the terms "GATT justification" and "rationale" in certain paragraphs of the United States' proposal (in this connection, he suggested that for automatic licensing the rationale for maintenance could be to show why automatic licensing is necessary because other appropriate procedures are not available); more concrete drafting language concerning the phrase "define more clearly the obligation to freely grant licences" (page 4, paragraph 1); and more specific details on the phrase "conditions or criteria under which exceptions may occur and procedures for publicizing and implementing these exceptions are to be undertaken" (page 6, paragraph 1.) While his delegation appreciated the United States proposal, he called attention to the need also to encourage wider membership of the Agreement. Finally, while Japan could agree to the proposal for incorporation of recommendations into the Agreement, further examination was needed of how this should be done; and with regard to the

phrase "provide interpretive guidelines in the text for "reasonable duration" in Article 3(h)" (page 7, paragraph 1), Japan was ready to study the meaning of "reasonable duration".

18. The representative of the European Communities took note of the remarks made by the United States and Japanese representatives. He noted that the Committee should not become a substitute for the Negotiating Group. While he shared many of the concerns expressed by Japan, he would take these up in the Negotiating Group. The representative of the United States said that her proposal would also be presented in the Negotiating Group: her view was that the Committee could play a technical rôle to assist the discussion in the Negotiating Group. The representative of New Zealand noted that the distinction between "substantive" and "procedural" questions was important, although no hard and fast lines could be drawn: questions which might seem procedural in nature could have substantive consequences. He agreed that the recommendations adopted by the Committee could usefully be incorporated into the text of the Agreement; it would also be useful to compare the obligations undertaken by participants under the Licensing Agreement with those under the General Agreement itself.

19. It was agreed that the Chairman should make a statement to the Negotiating Group, on his own responsibility, concerning these discussions.

F. Report to the CONTRACTING PARTIES

20. A draft of the Committee's report for 1988 to the CONTRACTING PARTIES was circulated. It was agreed that this should be updated to include the discussion within the current meeting.

G. Other Business

21. The Chairman proposed that the date of the next meeting should be provisionally set as 20 April 1989. It was understood that this provisional date could be changed, as appropriate, to coordinate the Committee's meeting with that of the Negotiating Group on MTN Agreements and Arrangements.