

GENERAL AGREEMENT ON

RESTRICTED

LIC/W/47

29 March 1989

TARIFFS AND TRADE

Special Distribution

Committee on Import Licensing

DRAFT MINUTES OF THE MEETING HELD
ON 3 MARCH 1989

Chairman: Mr. R. Molloy

1. The Committee held its twenty-third meeting on 3 March 1989.
 - A. Election of Chairman and Vice-Chairman
 2. Messrs. R. Molloy (Ireland) and D. Shark (United States) were elected Chairman and Vice-Chairman respectively for the year 1989.
 3. Members congratulated Messrs. Molloy and Shark on their election and thanked Mr. Mamdouh, the retiring Chairman, for the valuable work done by him in the past two years.
 - B. Status of signatories and observers
 4. The Chairman reported that there had been no change in the status of signatories and observers since the last meeting.
 - C. Information available on Import Licensing Procedures
 5. The Chairman reported that since the last meeting, new replies to the GATT Import Licensing Questionnaire had been received from Argentina (L/5640/Add.27/Corr.2), Finland (L/5640/Add.6/Rev.1), Hungary (L/5640/Add.12/Rev.1), India (L/5640/Add.7/Rev.3), and the United States

(L5640/Add.40/Suppl.2). Publications concerning import licensing procedures had been received from Canada, India, New Zealand, Pakistan, Poland and the United States (LIC/3/Add.21).

6. The representative of Hungary informed the Committee that since the reply to the GATT questionnaire noted above, a further major change had been introduced in Hungary's import licensing system. Import licensing had been abolished with effect from 1 January 1989 for goods representing approximately 40 per cent of the value of Hungarian imports in convertible currencies, including most machinery and parts, equipment for research purposes and some agricultural products. The relevant regulation, published in the Hungarian Official Gazette, would be notified in due course. His authorities regarded this as a considerable step in the process of economic reform, market opening and the fostering of competition. It should also be regarded as a contribution by Hungary to the objectives of the Uruguay Round. He hoped other countries could also make similar efforts towards trade liberalization.

7. The Committee took note of the information provided.

D. Implementation and operation of the Agreement

(a) Chile/EEC: apples (LIC/M/22, paragraph 7)

8. The representative of Chile recalled that the GATT panel established by the Council to discuss restrictions applied by the European Community on Chilean apples had not yet reported. Chile therefore continued to reserve its rights under the Agreement on Import Licensing. His delegation had also been told informally that the EC proposed to apply new restrictions on Chilean apples in 1989 and that an arbitrary quota had already been established. Such a situation, in the present state of the Uruguay Round, would be extremely serious. Chile reiterated that its rights under the Agreement were reserved and appealed to the EC not to

introduce such a restriction. Chile would use all procedures available under GATT and the Agreement on Import Licensing Procedures.

9. The representative of Chile said that the EC's actions went beyond the standstill understandings agreed in Punta del Este which require participants not to adopt measures in the legitimate exercise of GATT rights which go beyond that which is necessary to remedy specific situations or which can improve their negotiating positions.

10. The representative of the European Communities took note of the comments made by the Chilean delegation and said that the status of the Uruguay Round should not affect the exercise of normal rights and obligations of contracting parties. He recognized that Chile might wish to reserve all its rights in this case.

11. The representative of Chile reiterated that his delegation felt that the EC had violated the standstill provisions. In addition, the restrictions applied last year, and which might be applied again this year, were in his view contrary to Article XI of the General Agreement and to the provisions of the Agreement on Import Licensing Procedures.

(b) Finnish licensing measures on imports of flat steel bars from Romania
(LIC/W/45)

12. The representative of Romania thanked Finland for the information provided in LIC/W/45 on its import licensing régime for flat steel bars imported from Romania, following his request at the previous meeting (LIC/M/22, paragraphs 8-9). His authorities took the view that such licensing measures were not being used to administer a measure consistent with the relevant provisions of the General Agreement. Finland had not applied the procedures laid down in Article XIX of the GATT or in the Protocol of Accession of Romania, and had not argued for or demonstrated the existence of serious injury to domestic producers, as provided by the General Agreement. Bilateral consultations had been held in Bucharest in March 1988, at Finland's request, under Article XII of the bilateral trade

agreement between the parties; the decree under which Finland introduced the measure (notified in L/6342/Add.1) had cited that Article. Reference had been made to paragraph 4 of Romania's Protocol of Accession only after these bilateral consultations. This showed that Finland had not applied the provisions of Article 4 of the Protocol (examination by the CONTRACTING PARTIES) in this case.

13. Romania was of the opinion that Finland's licensing régime was applied in a discretionary and non-transparent manner as a way of pressurizing Romanian exporters to accept self-restraint. This was an illegitimate use of import licences for protectionist purposes, contrary to the provisions of the Agreement and created an obstacle to the normal flow of trade. In addition, he said, the Finnish communication contained a number of inaccuracies and did not show clearly the procedures used in the licensing system applied to steel products from Romania. Firstly, a special arrangement had been in existence between the two countries up till the end of 1985. Finland claimed, unilaterally and without any legal foundation, that this arrangement had been prolonged for the following years. Secondly, the licensing system was said by Finland to be non-automatic, and it was also stated that "the issuing of import licences ... is not based on fixed quantities". If the objective was to maintain the volume of trade at "traditional" levels (an objective which did not appear in the Agreement) he suggested that it would be more normal to specify the levels so as to ensure a minimal degree of transparency.

14. The representative of Romania asked the Finnish delegation to reply clearly to the questions posed at the previous Committee meeting. In particular, Finland should provide information as soon as possible concerning the level of the ceiling up to which Finland intended to grant import licences for Romanian flat steel plates and the envisaged duration of the licensing régime, specify the means envisaged to ensure access to the Finnish market for Romanian products within import volumes considered as traditional, and clarify how this would relate to a case by case examination of all licence requests. He said that Article 3(a) of the Agreement implied the existence of a quota or other specific import

restriction as a prior condition. While it was not within the competence of this Committee to make a judgement on the introduction of a new restriction (which Romania considered discriminatory and incompatible with the standstill commitment), it was within its mandate to examine procedures for application of non-automatic import licences. He recalled that Articles 3(b) and (c) required Parties to provide to each other, on request, all information concerning the administration of restrictions and to publish the overall amount of quotas, opening and closing dates and any changes. Finally, he requested Finland to abandon its discretionary licensing system and reserved his delegation's rights to act under the General Agreement.

15. The representative of Finland said that his authorities had, as requested, supplied Romania with the necessary information concerning import licensing on flat steel bars, as stated in LIC/W/45. While Finland's import licensing procedure on these products was non-automatic in character, there were no fixed quotas. Many of the questions raised by Romania were the subject of bilateral negotiations and could not be answered in this meeting: in addition, the question of GATT's competence was irrelevant for this Committee. Finland and Romania would be holding further bilateral consultations in the near future. The representative of Romania said that his questions referred to the existing licensing system, which fell within the competence of the Committee, and not to any aspect of consultations which might take place in the future.

16. The Committee took note of the statements made on both questions, and agreed to revert to these matters, if necessary, at a later meeting.

E. Work Programme

17. The Chairman recalled that the question of the definition of the term "import licensing" in Article 1.1 remained on the agenda. He recalled the request for information on administrative procedures, administrative bodies and documentation circulated by the Secretariat in early 1988. Replies to

this request, varying considerably in detail, had been received from Australia, Canada, Czechoslovakia, Finland, Hong Kong, New Zealand, Norway, Switzerland and the United States.

18. The Secretariat, at the request of the Chairman, introduced a background paper on the drafting history and interpretation of various provisions of the Agreement (LIC/W/46) which had been requested at the last meeting. It was not thought feasible, at this point, to give greater precision on the questions raised.

19. Members of the Committee wished to consider further how to proceed on the interpretation of particular terms discussed in the Secretariat note. The representative of the European Community stated that the Committee should take its responsibilities to show the directions in which participants wished the disciplines of the Agreement to evolve. Panel procedures were also available to settle disputes over interpretations. His delegation had made specific proposals on one question and looked forward to seeing a positive outcome in the Committee. The representative of Chile also recalled the need to agree among Parties to the Agreement on interpretations of the text.

20. It was agreed to discuss this issue further in informal consultations, which could be held at around the time of the next meeting of the Negotiating Group on MTN Agreements and Arrangements.

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

21. The representative of the United States said that her authorities remained committed to seeking improvements in the Agreement. Specifically, they sought clarification of terminology, including tighter definitions of automatic and non-automatic import licensing; the introduction of a stronger link in terms of scope, duration and trade effect between licensing procedures and the trade-restrictive measures they are used to administer; agreement on more specific disciplines on the use of

non-automatic licensing measures; strengthening of the review, transparency and notification procedures of the Agreement; and codification of the existing practice under the Agreement with respect to dispute settlement. The United States was encouraged by the interest in its initiative expressed by some other delegations. This showed that they were not alone in believing that significant improvement in the Agreement were needed. The incorporation into the Agreement of the Committee's 1987 recommendations was part of the United States' proposal but there was need to go further. In reply to the view that it was inappropriate to try to change a procedural Agreement into a substantive one, her delegation considered that there were already substantive provisions in the Agreement; it was difficult in such an Agreement to draw the line between procedural and substantive obligations; and finally, Ministers in Punta del Este recognized that there was a need to improve, clarify and strengthen the Tokyo Round Agreements as appropriate. The United States believed that in this case such improvements were not only appropriate but necessary.

22. A number of participants supported the United States' initiative. Some saw a gap between the procedural provisions of the Agreement and the substantive obligations of the GATT. Stronger notification and review requirements could allow interested Parties to understand better the rationale of import licensing requirements. The view was shared that import licences could distort and restrict trade. There was a mandate to strengthen the Agreement and these delegations were prepared to participate actively in the debate on the United States' proposals.

23. Others, while not opposing the United States' proposals, queried whether this Committee was the appropriate forum. The Negotiating Group on MTN Agreements and Arrangements was charged with improving, clarifying or expanding the Tokyo Round Codes. While the mandate given by Ministers might not be able legally to amend the Agreement as provided in Article 5.6, it represented a political commitment by all parties to the negotiations. However, the relationship between the Negotiating Group and the Committee envisaged technical work and advice to be provided by the Committee at the request of the Group; these delegations would welcome

such a request and see it as appropriate that the Committee should undertake such work.

24. Others emphasized at the same time that the Parties to the Agreement had the right to amend the Agreement under Article 5.6. One delegation noted that the tasks of the Committee and the Negotiating Group were on two parallel paths: the Committee should do its own job. The United States agreed with this view and said it would continue to use both tracks.

25. The Chairman, summing up, said that it was undeniable that there was a relationship between NG8 and the Committee; however, there were differences of views as to the precise nature of this relationship. This was a problem probably faced by most Code Committees. It was the prerogative of any member of the Committee to submit proposals to the Committee: the same held true for the Negotiating Group. All the Committees and the Negotiating Group would have to come to a pragmatic solution to the procedural problem and deal with it when sufficient proposals are on the table or when delegations are in a position to negotiate on particular proposals. The Committee agreed to revert to the question at its next meeting.

G. Biennial review of the Agreement

26. The Chairman said that the biennial review of the Agreement would take place in Autumn 1989. In the past, documentation prepared by the Secretariat for this meeting had been rather formal and tabular. It could perhaps be useful to take up, in informal consultations ideas on whether, and if so how, the review could be made more substantive, and on subjects to be covered in such a review. This was agreed.

H. Other business

Date of next meeting

27. It was agreed that the Committee would hold its regular meeting in Autumn 1989, but that the possibility would remain open, if delegations so desired, to schedule earlier meetings to coincide with those of the Negotiating Group on MTN Agreements and Arrangements.