

WORLD TRADE ORGANIZATION

RESTRICTED

G/LIC/M/1

19 June 1995

(95-1638)

WTO Committee on Import Licensing

MINUTES OF THE MEETING HELD ON 3 MAY 1995

Chairman: Mr. Calson Mbegabolawe (Zimbabwe)

1. The WTO Committee on Import Licensing, established under Article 4 of the WTO Agreement on Import Licensing Procedures, held its first meeting on 3 May 1995.

2. The following agenda was adopted:

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A. Election of Officers

3. The Committee elected Mr. Calson Mbegabolawe (Zimbabwe) as Chairman for 1995.

4. The Committee authorized the Chairman to conduct informal consultations and also to consult with the Chairman of the Council for Trade in Goods with a view to electing a vice-chairperson at the next meeting.

B. Rules of Procedure

5. The Chairman drew the attention of the Committee to Article IV:6 of the WTO Agreement which called upon the subsidiary bodies of the Councils to establish their rules of procedure subject to the approval of their respective Councils. He recalled that the Council for Trade in Goods, at its meeting on 3 April 1995, had agreed that the rules of procedure for meetings of the General Council shall apply *mutatis mutandis* for meetings of the Council for Trade in Goods with certain modifications as set out in document G/C/W/2. He proposed that the Committee adopt the same rules of procedure as adopted by the Council for Trade in Goods with changes where necessary to take account of the specific requirements of this Committee. The Committee could request the Secretariat to prepare these rules for adoption at the next meeting and agree to conduct its business in the meantime in accordance with established GATT practice.

6. The Committee so agreed.

C. Participation in Meetings/Observership

7. The Chairman noted that an invitation to attend this meeting had also been addressed to signatories of the Final Act that were contracting parties to the GATT 1947 and were eligible to become original Members of the WTO, other governments with observer status in the WTO, and certain international organizations. The invitation to the signatories of the Final Act was based on a Decision taken by the WTO General Council at its meeting of 31 January 1995 (WT/L/27). In respect of observer governments, he referred to a Decision taken by the General Council at the same meeting on guidelines for observer status in the WTO (WT/L/28, Annex 2).

8. With reference to paragraph 6 of Annex 2 of document WT/L/28, the Chairman noted that governments with observer status were allowed to "participate as observers at meetings of working parties and other subsidiary bodies of the General Council as appropriate", with certain exceptions. This did not prevent this Committee, if and when considered appropriate, from holding closed sessions without the presence of observers.

9. The Committee took note.

10. The Chairman recalled that the question of guidelines on observer status in the WTO for international intergovernmental organizations had not yet been resolved. Pending final agreement on this matter, an interim arrangement had been worked out regarding the attendance by such organizations at the first meetings of WTO bodies (WT/GC/COM/2). Pursuant to this arrangement, the Council for Trade in Goods had decided at its meeting on 20 February 1995 that the IMF and UNCTAD would be invited to attend the first meeting of this Committee (G/C/M/1). The Council for Trade in Goods had further agreed that, pending the adoption of criteria and conditions for observer status for international intergovernmental organizations in the WTO, each subsidiary body of the Council for Trade in Goods should decide, at each meeting, which organizations should be invited as observers to its next meeting (G/C/M/2). These ad hoc arrangements were without prejudice to the positions

of delegations in future discussions on the question of observer status of these organizations. The Chairman proposed that, unless the criteria and conditions for observer status are agreed in the meantime, the IMF, UNCTAD, and the World Bank which had requested observer status in this Committee be invited to attend the next meeting.

11. The Committee so agreed.

D. Coordination between Committees

12. The Chairman referred to a Decision taken by the General Council at its meeting on 31 January 1995 on the Avoidance of Procedural and Institutional Duplication (WT/L/29). The Decision taken in accordance with the recommendation of the Preparatory Committee, provided for cooperation between the Tokyo Round Committee on Import Licensing and this Committee with respect to notifications and the holding of joint or consecutive meetings in the period between the date of entry into force of the WTO Agreement and the date of termination of the legal instruments through which the contracting parties applied the GATT 1947 and the Tokyo Round Agreements. The Decision of the Preparatory Committee and the CONTRACTING PARTIES to GATT 1947 (PC/11, L/7582) would be proposed for adoption at the Tokyo Round Committee on Import Licensing. A draft decision to terminate the Tokyo Round Agreement on Import Licensing Procedures had also been circulated for the consideration of that Committee (LIC/W/73). He proposed that the Committee take note of the Decision of the General Council.

13. The Committee took note of the Decision.

E. Notification procedures

14. The Chairman drew attention to the reminder of notification obligations under the Agreement on Import Licensing Procedures, issued by the Secretariat as WTO/AIR/16, and proposed that the Committee adopt procedures for notification. First, he drew the attention of the Committee to the fact that the Agreement on Import Licensing Procedures was not specific as to the language in which notifications under Articles 1.4(a) -- publications -- and Article 8.2(b) -- laws and regulations -- were to be made. According to Article 1.4(a), the relevant information was required to be published "in such a manner as to enable governments and traders to become acquainted with them". Further, with respect to publication of information, several provisions in Article 3 (paragraphs 3, 4, 5(b), 5(c) and 5(d)) required Members to publish certain information "for other Members and traders to know the basis for granting and/or allocating licences", or "in such a manner as to enable governments and traders to become acquainted with them". It would be necessary to agree whether, in cases where the publications were not in a WTO language, a summary in a working language of the WTO should be provided together with the publication. The Agreement was not specific also as to the language in which notifications of laws and regulations under Article 8.2(b) should be made. This was the case also for several other WTO Agreements. With respect to the Tokyo Round Agreements, including the Licensing Code, which had been silent as to the language in which national legislation should be notified, the Code Committees, at their first meetings, had adopted decisions to ensure that notifications of national legislation would, where the national language was not a GATT language, be also made in a GATT language. He proposed that the Committee consider whether to take a similar decision by the WTO Committee on Import Licensing, and if so, whether it would be necessary to have either the whole notification, or a summary of the notification, in one of the official languages of the WTO. The second issue which required to be addressed was whether the first notification of laws and regulations under Article 8.2(b) should cover the full text of relevant laws and regulations in effect on entry into force of the WTO Agreement for the Member concerned, and if so, what the time-limit should be for such notifications, e.g., as for current Members: within three months from the date of this meeting, and as for future Members: within three months from the date of entry into force of the WTO Agreement

for the Member concerned. The third issue was whether in respect of notifications under Article 7.3, it would not be appropriate to retain the current time-limit of 30 September, agreed by the GATT 1947 Council for the submission of replies to the annual questionnaire on import licensing procedures. Fourthly, as had been raised in the informal meeting, the Committee should address whether any import licensing aspects associated with the administration of tariff quotas resulting from "tariffication" in agriculture should be notified to this Committee or to the Committee on Agriculture.

15. The representative of the United States noted that several other Committees established under the WTO Agreement had decided that the first notification of laws and regulations should include the full text of the relevant national legislation and proposed a similar procedure for this Committee. He further proposed that, for reasons of transparency, replies to the questionnaire on import licensing procedures be issued as unrestricted documents and be available to the public immediately. In addition, his delegation proposed that all documents of this Committee be issued as unrestricted documents.

16. The representative of Japan said that the issues relating to the language and content of notifications, time-limits and notification of import licensing aspects associated with "tariffication" should be carefully considered taking into account the need for transparency of the system, practicability, and the notifications already submitted under the Tokyo Round Code. As for the United States' proposal that the Committee documentation be issued on an unrestricted basis, this was, in his view, a matter which required careful consideration as any decision on this in this Committee might affect decisions in other areas of the WTO. Therefore, his delegation proposed that these issues be addressed in informal consultations prior to reaching any formal agreement in the Committee.

17. The representative of Canada said that, prior to agreeing on a time-limit for notifications, it would be necessary for the Committee to discuss what needed to be notified. Following on from the point mentioned by the Japanese delegation, Canada wondered whether it would still be necessary for Members to submit separate and new notifications under the WTO Agreement even if there had been no change in the substance of the notifications that had recently been provided under the Tokyo Round Agreement. It was his view that the previous notifications made to the Tokyo Round Code Committee would be sufficient if they covered all the grounds of the WTO Agreement. Further, it might be useful to know whether the import licensing questionnaire referred to in Article 7.3 covered all the points modified in the WTO Agreement and whether it was up-to-date with the new obligations contained therein. Concerning the circulation of documentation on an unrestricted basis, he shared the view of the Japanese delegation that this was a horizontal issue. Rules and procedures relating to this were being discussed elsewhere and these should apply to all bodies so as not to deviate from the general practice. Finally, concerning the notification of import licensing aspects linked to the administration of tariff quotas on agricultural products, his delegation's preference was to avoid, as much as possible, the duplication of notifications. In this respect, it would be worthwhile to examine whether the notifications provided to the Committee on Agriculture covered all the points usually provided in the notifications of import licensing. Should this be the case, a simple cross-reference would suffice. On the other hand, should there be differences between the content of the notification provided to this Committee and that provided to the Committee on Agriculture, it would be necessary to reflect on the appropriate procedure that should be developed in future, in order to ensure that all relevant information was provided, while duplication was minimized to the greatest extent possible.

18. The representative of Hong Kong said that he shared the views of previous speakers on notifications. As regards WTO/AIR/16 which listed four obligations under different Articles, it seemed to him that the information required to be submitted was more or less the same. For example, import licensing procedures derived from the laws and regulations themselves. Therefore, the Committee should consider whether joint notifications under more than one provision could be submitted whenever relevant.

19. The representative of Mexico shared the views expressed by the delegation of Canada concerning the submission of information on import licensing on agricultural products, the tariffs of which were determined in the agricultural negotiations. If a licensing system had been notified to the Committee on Agriculture, it would not be necessary to notify it again to this Committee. However, as the prime obligation with respect to import licensing was to this Committee, one solution would be to have some cross-referencing. In cases where import licensing particulars were provided to the Committee on Agriculture, the Committee on Import Licensing could take note of such information. Duplication in the notification process must be avoided whenever possible.

20. The representative of the European Communities said that her delegation shared the concerns voiced by the delegation of Canada, particularly as regards what needed to be notified, the possible modification of the questionnaire, and the derestriction of documents which was being discussed elsewhere. The European Communities suggested that the Chairman hold informal consultations on all these points.

21. The representative of the United States said that, concerning the issue relating to agricultural products, his delegation recognized that a close coordination between the Committee on Agriculture and this Committee was vital, and that the specific suggestion by the Mexican delegation seemed a practical and useful way to facilitate this coordination.

22. The representative of Pakistan said that, in view of the fact that the Agreement required notification of the rules and procedures on import licensing and the criteria for issuing licences, the questionnaire on import licensing procedures was not all that relevant. The questionnaire which had been drawn up a long time ago did not take into account the new procedures that some countries might have adopted. For example, his country had done away with licensing as such and there was no authority that issued import licences although, in certain cases, authorization of various departments were required for importation. He was not sure whether to consider such procedures as import licensing and notify them in the form of replies to the questionnaire to this Committee or, as technical barriers, to the TBT Committee, or under another Agreement.

23. The representative of Korea suggested that the Chairman pursue the discussion on the issues raised under this item of the Agenda in informal consultations.

24. The representatives of Switzerland and Hungary shared the views expressed by Japan and proposed that, in view of the divergent views expressed by delegations, the issues raised under this Agenda item be discussed in informal consultations to be held under the guidance of the Chairman.

25. The Chairman noted that there was general agreement on the need to pursue informal consultations on the issues raised under this Agenda item and stated his intention to hold such consultations as soon as practicable.

26. The Committee so agreed.

F. Notifications

- Invocation of Footnote 5 to Article 2.2 (Delayed Application of Certain Provisions) by Developing Country Members

27. The Chairman drew attention to footnote 5 to Article 2.2 of the Agreement which provided for delayed application of certain requirements linked to automatic import licensing, by developing-country Members which were not Parties to the Tokyo Round Code, for a period of two years from

the date of entry into force of the WTO Agreement for the Member concerned. Document G/LIC/1 listed 18 developing-country Members which had invoked the relevant provisions.

28. The representative of the European Communities said that, in order to ensure transparency, her delegation believed that it would be advisable if developing countries invoking footnote 5 indicated the specific difficulties of those countries that justified their request for the waiver as well as the relevant time-frames.

29. The representative of Canada supported the comments made by the European Communities about the need for further details on the invocation of delayed application provisions. This was one of the elements that his delegation had in mind when referring to the need to update the import licensing questionnaire. As this was a new provision introduced in the WTO Agreement, there might be a need that questions relating to such information should be added to the questionnaire.

30. The representative of the United States supported the EC proposal and further noted that the delayed application of certain provisions of the Agreement did not mean that developing countries which invoked them were exempt from the notification procedures and any deadlines.

31. The representative of Japan shared the views expressed by the European Communities and supported by Canada and the United States.

32. The representative of Venezuela, supported by El Salvador, said that the provision of footnote 5 was clear and specific and that it did not impose an obligation on countries invoking it to explain the reasons for such invocation. This was something that could be done on a voluntary basis. He agreed with the United States that countries availing themselves of this provision must abide by the obligation to notify within the relevant time-limits.

33. The representative of Uruguay shared the views of Venezuela. Had it been in the mind of the drafters of the Agreement, footnote 5 would have included the specific obligation on those who invoked the provision to justify and give whatever explanation the Committee deemed necessary.

34. The representative of Costa Rica too agreed that it was not required to spell out reasons for invoking the footnote. The specific difficulties of developing countries which invoked the provision were covered either by sub-paragraph (a)(ii) or (a)(iii), or both.

35. The representative of Egypt too supported the views expressed by Venezuela that there was no specific requirement to give any reasons for invoking the provisions for delayed application. As for the time-frames mentioned by the European Communities, he believed that the footnote indicated the time-limit for the application of the clause.

36. The representative of Malaysia too supported the statement made by Venezuela and said that he believed that it was sufficient to notify the Committee that the provisions were being invoked.

37. The Chairman proposed that, in view of the difference of opinion on the matter and also as some of the points raised touched on the time-limits for notification and possible revisions to the import licensing questionnaire, he be authorized to take up these matters in informal consultations with a view to reaching some agreement.

38. The Committee so agreed.

- **Notification by Malaysia**

39. The Chairman drew attention to the notifications from Malaysia (G/LIC/N/2/MYS/1) concerning the institution of an automatic licensing system, with effect from 23 March 1995, on imports of polyethylene and polypropylene.

40. The representative of Singapore welcomed the notification and noted that the automatic licensing procedure had been implemented for the purpose of data collection with effect from 23 March 1995. Singapore hoped that Malaysia would administer the new automatic licensing system in full conformity with its obligations under the GATT and the WTO Agreement on Import Licensing Procedures. She recalled in this connection the notification made by Malaysia, circulated as document WT/L/32 dated 6 February 1995, of its invocation of GATT Article XVIII:C to apply, as from 7 April 1994, quotas and import licensing procedures on imports of polyethylene and polypropylene. Singapore understood that the invocation of Article XVIII:C pertained to the use of a non-automatic licensing measure. Apart from the notification to this Committee, there existed another notification made by Malaysia of its licensing scheme on the same two products, albeit to a different forum in the WTO. Singapore would appreciate it if Malaysia could explain the rationale for the existence of the two notifications and the inconsistency between its notification to this Committee and its notification under GATT Article XVIII:C of a licensing measure on the same products, which had not been circulated to this Committee.

41. The representative of Japan too sought clarification of the automatic licensing measure notified to this Committee on the two petrochemical products and the relationship of this measure with the measure notified under GATT Article XVIII:C on the same products. Japan shared Singapore's view that the automatic licensing system should be implemented in full conformity with the GATT and the Import Licensing Agreement.

42. The representative of Malaysia confirmed that the import licensing procedure on polyethylene and polypropylene was automatic and that it would be implemented in conformity with its obligations under the GATT and the WTO. He further confirmed that the non-automatic licensing measure previously notified to the WTO and circulated in document WT/L/32 was modified into an automatic import licensing measure. The notification made to this Committee circulated as document G/LIC/N/2/MYS/1 concerned this modification. In this respect, he recalled that the Chairman of the Council for Trade in Goods, at its meeting on 3 April 1995, had reported on the consultations he had had with the two delegations on this matter. Malaysia had subsequently modified the measure into an automatic licensing system as was communicated to this Committee. The Chairman of the Council for Trade in Goods had also been informed of this modification and been requested to take this into account in his consultations.

43. The Chairman proposed that, in the light of the clarification provided by Malaysia and in view of the fact that the Chairman of the Council for Trade in Goods was pursuing consultations on this matter, the Committee take note of the statements.

44. The Committee took note of the statements.

- **Notification by Costa Rica**

45. The Chairman proposed, and the Committee agreed that, in view of the fact that the communication from Costa Rica concerned the issue of notification of matters that also related to agriculture, the Committee take this matter up in informal consultations.

46. The representative of Costa Rica said that her delegation would await the results of the informal consultations in order to make the notification to the appropriate Committee.

G. Procedures for Review under Article 7.1

47. The Chairman said that in accordance with Article 7.1 of the Agreement "the Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement, taking into account the objectives thereof, and the rights and obligations contained therein". Article 7.2 stated that "as a basis for the Committee review, the Secretariat shall prepare a factual report based on information provided under Article 5, responses to the annual questionnaire on import licensing procedures and other relevant reliable information which is available to it", and that "this report shall provide a synopsis of the aforementioned information, in particular indicating any changes or developments during the period under review, and including any other information as agreed by the Committee". Under the Tokyo Round Agreement, the Committee carried out biennial reviews usually at the autumn meeting of the Committee on the basis of a document prepared by the Secretariat, which consolidated all the relevant information submitted by signatories during the period under review. Signatories were invited to communicate to the Secretariat any additional data they wished to have included in the document. The document was revised, as necessary, following the review session to take into account any additional points raised at that meeting. He asked whether the Committee wished to follow the same procedures as the Tokyo Round Committee.

48. The representative of the United States suggested that the Committee revert to this item at a future meeting after the Committee had had some time and experience with the notification process. This would give more insight and a better idea as to how the Committee should proceed.

49. The representative of Poland suggested that this be discussed at the next meeting after agreeing on matters such as the time-limit for the submission of replies to the questionnaire.

50. The Committee agreed to include this in the list of issues to be discussed in informal consultations of the Chairman, and to revert to this item at the next meeting of the Committee.

H. Reporting to the Council for Trade in Goods

51. The Chairman drew attention to Article 7.4 of the Agreement which stated that the Committee shall inform the Council for Trade in Goods of developments during the period covered by reviews. Under the Tokyo Round Agreement, the Secretariat prepared a draft report to the CONTRACTING PARTIES, which was circulated to signatories in advance of the meeting. This report was reviewed by the Committee at its autumn meeting, and was updated subsequently by the Secretariat on the basis of instructions received by the Committee and in the light of the Committee's proceedings at that meeting.

52. The Chairman proposed, and the Committee agreed, that the Committee follow the same procedure as the Tokyo Round Committee regarding the report to the Council for Trade in Goods.

I. Other Business

53. The representative of the United States expressed concern over the proliferation of certification requirements on imports which were, in his view, *de facto* discretionary import licensing. In a particular case, a Member had been reported to be issuing phytosanitary import permits for only limited quantities of a product, often for less than the amount requested by the importer.

54. The Committee took note of the statement.

J. Date of Meetings

55. The Chairman referred to Article 4 of the Agreement which stated that the Committee "shall meet as necessary...". Under the Tokyo Round Agreement, the Committee held two regular meetings each year, in spring and autumn. He proposed that the WTO Committee follow the same practice and meet, in principle, twice a year in spring and autumn. This schedule would also enable the Tokyo Round Committee and the WTO Committee to hold joint or consecutive meetings as envisaged in the Decision on Avoidance of Procedural and Institutional Duplication. This was on the understanding that more frequent meetings would be convened if required. If this was acceptable, the next meeting of the Committee would be held in autumn, the exact date to be established after consultation with delegations. In the meantime, he would hold, as agreed, informal consultations with delegations on the issues left for further reflection.

56. The Committee so agreed.