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Committee on Import Licensing

MINUTES OF THE MEETING HELD ON 8 MAY 2003

Chairman: Mr. Hiromichi Matsushima (Japan)

The Committee on Import Licensing held its seventeenth meeting on 8 May 2003. The agenda proposed for the meeting, contained in WTO/AIR/2081/Rev.1, was adopted as follows:

1. Members' compliance with notification obligations – Developments since the last meeting

1.1 The Chairman informed the Committee that since the last meeting, 47 notifications had been received from 30 Members under various provisions of the Agreement on Import Licensing Procedures. However, as of the date of the meeting, out of a total Membership of 146, there remained 29 Members[1] who had not submitted any notification since joining the WTO; only 106 Members (counting each of the EC member States individually) had submitted notifications of laws and regulations (under Articles 1.4(a) and/or 8.2(b)); only a cumulative total of 105 Members had submitted replies to the Questionnaire (under Article 7.3) since the entry into force of the WTO Agreement; Article 7.3 notifications had been received from only 57 Members in 2002 (EC member

[1] Angola, Armenia, Belize, Botswana, Central African Rep., Congo, Congo, Dem. Rep., Djibouti, Dominican Rep., Egypt, El Salvador, Guinea, Guinea Bissau, Israel, Kuwait, Lesotho, Macedonia, Mauritania, Mozambique, Myanmar, Nicaragua, Papua New Guinea, Rwanda, St. Vincent & Grenadines, Sierra Leone, Solomon Islands, Suriname, Tanzania and Thailand.

States counted separately), and from ten up to the date of this meeting this year; only 42 Members had notified new licensing procedures or changes in existing procedures (under Paragraphs 1-4 of Article 5). While Article 5.5 of the Agreement allowed Members to submit counter-notifications, where a Member considered that another Member had not notified the institution of a licensing procedure or changes in the procedures, up to the date of this meeting no such counter-notifications had been received.

1.2 The Chairman said that the Secretariat had reminded several delegations, informally, of their pending notifications. In addition to this, at the end of each year, the Central Registry of Notifications sent to each Member a list of notifications that should be made under all WTO Agreements in the following year; this was followed up with periodic reminders from the CRN to those Members who had not submitted the required notifications during the year. The Secretariat had also reminded delegations concerned of questions posed to them by other Members regarding their licensing systems or notifications (which had been circulated in document series G/LIC/Q/-). Since the last meeting, written replies to these questions had been provided by four delegations – Ecuador, the European Communities, Haiti and Uruguay – which had also been circulated in the same document series, G/LIC/Q/-.[2] Other delegations that were in a position to provide replies to the questions were requested to do so at this meeting, keeping in mind that under the procedures adopted in the Committee they were required to provide replies, in writing, to those delegations that had posed questions, with copies to the Secretariat (G/LIC/4).

1.3 The representative of Venezuela stated that responses to the questions posed by the United States in May 2002 (contained in G/LIC/Q/VEN/3) would be submitted shortly.[3]

1.4 The representative of the United States expressed his appreciation to those Members who had made submissions, and especially those who had notified for the first time, and to the European Communities, Ecuador and Haiti who had provided responses to their written questions. Notifying the licensing system or lack of one was central to the transparency obligations of this Agreement. Such notifications and responses were an essential element of WTO Members' obligations, and tangible evidence of the respect they owed each other as Members, to be both transparent in the administration of their trade regimes and responsive to legitimate requests for information about access to each other's markets. He regretted that, as had been noted constantly in recent meetings, even initial compliance with the notification requirements of this Agreement fell below two-thirds. He believed that a more concerted effort was needed by all Committee Members in this regard and suggested that the Chairman communicate with all Committee Members, noting any identifiable deficiencies, and asking them to review the status of their notifications with the Committee and, as necessary, to bring them into line with the notification requirements of Articles 1, 5, 7 and 8. The United States thanked the Chairman and the Secretariat for their continuing encouragement to improve compliance, such as sending reminders to Members on pending notifications and reminding those delegations who had received questions posed by other Members to submit their replies. He hoped that the Chairman and the Secretariat, with input from Members, would continue to examine how a useful offer of technical assistance could be made to those Members who believed they did not have the capacity to fulfill those obligations. Thus far no Member had requested such assistance.

1.5 With respect to specific questions that the United States had for various delegations, he thanked the European Communities for their response to the questions the United States had posed during the May 2002 meeting, i.e. why importers of organic fruit and vegetables were required to obtain an import authorization prior to import and why this measure was not included in G/LIC/N/3/EEC/4, Annex 1. The European Communities had responded in November 2002 (in G/LIC/Q/EEC/2) that this requirement had been instituted to improve and complete the inspection of

[2] G/LIC/Q/ECU/2, G/LIC/Q/EEC/2, G/LIC/Q/HTI/2 and G/LIC/Q/URY/2.
[3] Responses subsequently circulated in G/LIC/Q/VEN/4.

imported organic products; that the Regulation concerned (i.e. Commission Regulation No. 1788/2001) had been notified to the Committee on Technical Barriers to Trade (in G/TBT/N/EEC/2 of 6 February 2001); and that the European Communities believed that this requirement was not within the scope of the Agreement on Import Licensing Procedures. He thanked the European Communities for this response, but sought clarification as to why this measure did not meet the definition of an import licence as defined in Article 1.1 of the Agreement, i.e. *"as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation …"*. With respect to Mexico, he noted that at the September 2002 meeting the representative of Mexico had stated that his authorities were working with the relevant Government officers to make their notifications as soon as possible. The United States looked forward to this submission. With respect to Turkey, the United States had noted at the September 2002 meeting that Turkey had not notified its import licensing requirements for a number of agricultural products, including wheat, corn, rice, pet foods, certain kinds of fruit contained in HTS Chapter 8, and distilled spirits other than whiskey contained in HTS 2208, and that it was hampering imports. Although Turkey had previously notified its import licensing requirements for a number of industrial products, it had never notified import licensing procedures on agricultural products to the Committee on Import Licensing, as required under Article 5 of the Agreement. Importers continued to have problems securing import permits, especially during harvest time, October, for a wide variety of imported products including fruit, bananas, rice, beans, pulses and wines. In addition, licence sizes and regulations continued to be changed by the Turkish authorities without proper notification or warning to the WTO. The United States again asked that Turkey submit its notifications for agricultural products and update its annual notification of replies to the Questionnaire to cover these products. His authorities were also interested in answers to the following questions: were there any specific administrative requirements related to import licensing for commodities mentioned above, including any quantitative limitations on the amount of imports allowed with a single import licence? What was the number of import licences granted, the number rejected and the quantity imported for the above-mentioned products by supplying country over the last 24 months? What was the administration responsible for import licensing requirements for the above-mentioned countries and products and the legal authority for such actions? With respect to Costa Rica, the United States was concerned that Costa Rica sometimes delayed the issuance of permits for rice beyond the Government of Costa Rica's rule that required a ten-day turnaround. This in some cases had caused sales to unravel as market conditions changed during these long periods of delay. The United States remained concerned and requested that Costa Rica explain to the Committee what steps they were taking to reduce these delays. His authorities noted that a similar situation existed with respect to exports to the Dominican Republic which required import licences. There was no record that the Dominican Republic had ever submitted a notification to this Committee. His delegation hoped that this would be remedied prior to the next meeting of the Committee when the United States would outline its concerns in more detail. With respect to Romania, at both the May and September 2002 meetings, Romania had been asked to explain whether the products covered in notification G/LIC/N/2/ROM/3 were addressed in the currently notified legislation and Romania's replies to the Questionnaire. The United States was looking forward to receiving an explanation in writing, as requested by the Chair. Finally, there was an extensive list of questions that the United States would like to pose to China on its Tariff Rate Quota (TRQ) administration, specifically issues involving licensing, commercially viable quantities, transparency and the Ministry of Commerce automatic registration process. As these questions had been given to the delegation of China only that morning, and therefore they could not expect to have any responses at this point, the United States would submit their questions to the Secretariat for circulation to Members[4], and hoped that the Chinese delegation would provide responses.

[4] Subsequently circulated in G/LIC/Q/CHN/4.

1.6 The following were the questions that the United States posed to China[5]:

"Background on Tariff Rate Quotas (TRQs)

Licensing: Paragraph 138 of the Working Party Report[6] provides that China "would not require a separate import licence approval for goods subject to a TRQ allocation requirement but would provide any necessary import licence in the procedure that granted a quota allocation." This was the concession China made in December 2000 that allowed China's overall accession negotiations to resume after they had stalled. Paragraph 6.A of the TRQ headnote (found in Part I, section I-B of China's Schedule of Concessions and Commitments on Goods) states that: "[a]ny additional requirement for importation will be automatic under the terms of the Agreement on Import Licensing Procedures." Despite these commitments, endusers must apply twice for approval in order to obtain and utilize TRQ. After receiving an allocation from the SDRC (formerly SDPC) in the form of a "notice," quota holders are required under Article 17 of China's *Interim Measures on the Administration of Tariff-Rate Quota for Agricultural Imports*, to then apply for an Agricultural Tariff Quota Certificate by bringing the notice and a signed contract to SDRC.

Article 2 of the WTO Agreement on Import Licensing Procedures confirms that no government discretion is permitted in granting automatic import licences and it further prohibits administration of automatic import licences in a manner that has trade-restrictive or distortive effects on imports. It also requires approval "immediately upon receipt, to the extent administratively feasible, but within a maximum of ten working days." In addition to being required to go through two separate approval processes at SDRC for the same TRQ allocation as described above, quota holders must obtain an import licence from AQSIQ pursuant to AQSIQ Ordinance 7 (effective 20 March 2002). This licence also requires a minimum of two applications, does not appear to be justified on SPS grounds, and is being implemented in such a manner as to act as an additional quantitative restriction. According to industry, approval for this licence can take up to 30 days at each level of government.

Finally, endusers holding "processing trade" quota are subject to additional licensing requirements which add additional steps to the process: In order to utilise their allocated quota, entities holding processing trade TRQ must apply for and obtain a "Processing Trade Certificate" from MOC (formerly MOFTEC) before they can utilise their quota. They must also obtain a separate processing trade business licence as a precondition for obtaining a TRQ allocation. In the US view, these additional steps are trade restrictive and are not in accordance with China's obligation to provide any required licence in the procedure to grant the quota, and to make "automatic" any additional requirement for importation.

Commercially Viable Quantities: Paragraph 6.E obligates China to allocate TRQs in commercially viable shipping quantities. Article 3.5 (i) of the Agreement on Import Licensing Procedures emphasizes the importance of issuing licences for products in economic quantities. However, reports from traders indicate that allocations of some commodities are too small to be commercially viable, and as a result, endusers are either not applying for TRQ or are not utilising their allocations because it is not economic for them or their agent. Industry reports that some of the cotton TRQ allocations in 2002, for example, were as small as 200 metric tons, which is well below what is considered a commercially viable shipping quantity for cotton. During bilateral consultations, China agreed that it had allocated some TRQ in less than commercially viable quantities. We asked China to modify the system to avoid this problem in the future and China agreed to consider.

[5] Subsequently circulated in G/LIC/Q/CHN/4.
[6] WT/ACC/CHN/49.

Transparency: The United States remains concerned with the lack of transparency in China's administration of TRQs. The US Government and US exporters have experienced difficulty discovering which entities have been allocated TRQ, despite China's commitment in the TRQ headnote to administer the TRQ system in a transparent manner and to provide this information within ten days upon request to SDRC (headnote, paragraph 6.F). Our inability to obtain this information makes it difficult to assess China's implementation of its TRQ obligations and appears to undermine China's commitment to "provide effective import opportunities." During our bilateral consultations, China informed us that it did not intend to provide additional information on the entities receiving allocations. Industry requests to SDRC for information on 2003 allocations have gone unanswered.

MOC Automatic Registration Process: The Unites States is increasingly concerned that MOC is limiting issuance of its automatic registration form (ARF) in an effort to restrict imports of chicken meat and offal. Industry and traders recently reported that in March, MOC ceased issuance of ARF to importers in Guangdong Province and in Shanghai, restricted issuance to select importers. Although these reports are anecdotal, they are supported by trade statistics (US chicken exports to China are off by nearly $100 million from levels two years ago) and by the fact that Chinese domestic prices for major imported chicken cuts remain well above landed costs plus tariff and VAT for imports.

Administration of Agricultural TRQs

The United States remains very concerned with China's licensing regime for goods subject to a TRQ allocation requirement.

We continue to believe that these licensing requirements are not in accordance with China's WTO commitments.

In an effort to seek accommodation, the United States engaged in bilateral consultations with China on this issue in September 2002 and again in February 2003.

To date we have seen little progress, and no indication that China's TRQ licensing requirements will be brought into compliance with WTO obligations.

While the United States remains open to additional bilateral dialogue, we are nearing the point where lack of resolution will force escalation of this issue.

TRQ Licensing

- Paragraph 138 of the Working Party Report states that China will not require a separate import licence approval for goods subject to a TRQ allocation requirement, but will provide any necessary import licence in the procedure that granted a quota allocation.

- Paragraph 6.A of China's headnote on Tariff Quotas states that "Any additional requirement for importation will be automatic under the terms of the Agreement on Import Licensing Procedures."

- This Agreement states that "automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports", and that applications should be "approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days."

- Contrary to this commitment China maintains multiple licensing requirements that occur outside of the procedure granting quota allocation and that do not appear to be automatic.

- End-users must apply twice to SDRC for a single allocation – once for the initial allocation and a second time for SDRC's approval to use that allocation once the importer has a signed contract.

- Quota-holders must apply for and obtain, at both the local and national level, an additional import licence from AQSIQ before the product can be imported. We understand that approval can take up to 30 days at each level of government.

- Entities importing under TRQs reserved for processing, must obtain a separate processing trade business licence and a "Processing Trade Certificate" in order to obtain a TRQ allocation.

• These separate and multiple licensing requirements and the additional time and effort expended by importers to fulfill them, are an undue burden on trade and appear to be in conflict with China's commitments.

- China continues to require quota-holders to provide detailed, time-sensitive commercial information, such as price and origin, prior to obtaining an import licence, and it restricts the commercial terms that can be changed thereafter. Paragraph 6.A of the TRQ headnote requires China to "establish a tariff-quota system that is open, transparent, fair, responsive to market conditions, timely, minimally burdensome to trade, and reflects end-user preferences."

• This requirement unduly restricts an end-user's ability to adjust to market conditions and operate based on commercial considerations.

- Please comment on the foregoing description, explaining how in China's view these measures meet WTO requirements.

- Please explain the steps China will take to eliminate the additional, non-automatic licensing requirements for TRQ commodities or how it will bring these requirements into accordance with its WTO commitments.

- Please explain how China's TRQ licensing regime will be affected by the recent government restructuring involving MOFTEC, and the SDRC.

• China prohibits the sale of products imported under "processing" TRQ from being sold on the domestic market. End-users who do sell these commodities or their products in the domestic market are subject to penalties and to out-of-quota tariffs.

• This restriction on utilisation would appear to not accord with Article 3.2 and 3.5(h) of the Agreement on Import Licensing Procedures (Article 3.2 provides that "non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction." Article 3.5(h) provides that "when administering quotas, Members shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilisation of quotas.")

- Can China please explain how this restriction is consistent with its obligations under the Agreement on Import Licensing Procedures, or explain what steps it will take to remove this restriction?

Commercially Viable Quantities

- Paragraph 6.E obligates China to allocate TRQs in commercially viable shipping quantities. Article 3.5 (i) of the Agreement on Import Licensing Procedures emphasizes the importance of issuing licences for products in economic quantities.

- In 2002, there were many complaints from traders that some TRQs had been allocated in quantities that were not commercially viable to ship. Chinese officials acknowledged this problem and indicated interest in addressing it for the future.

- What steps has China taken to ensure that it issues licences for products in commercially viable quantities?

Transparency in TRQ administration

- The US remains concerned with the lack of transparency in China's administration of TRQs.

- With respects to licensing, the US Government and US exporters continue to experience difficulty in obtaining information on which entities have been allocated TRQs and TRQ import licences.

- China committed, in the TRQ headnote (paragraph 6.F) to provide this information within ten days upon request to SDRC and to administer the TRQ system in a transparent manner.

- Why does China refuse to provide this information?

- What steps is China taking to provide this information within the agreed time frame?

MOC Automatic Registration Process

- MOC's automatic registration for imports of chicken meat and offal does not appear consistent with the provisions for automatic licensing in the Agreement on Import Licensing Procedures.

- We have received reports from our industry that MOC is restricting issuance of its automatic registration form, a required document for importation, and that some major ports have experienced prolonged periods, sometimes exceeding 30 days, during which no forms were issued.

- We are concerned that this registration requirement is being used to quantitatively restrict chicken meat and offal imports. China's WTO accession did not establish a quota for any of these products.

- Can China explain what objective it is trying to achieve with this registration form and how this requirement is in accordance with China's WTO commitments?

- Can China address the reports that forms are not being issued in a prompt and automatic fashion?

- Could China please describe the steps it will take to eliminate or bring this requirement into accordance with China's obligations?

Administration of Auto Quotas

• China administers quotas for imports of automobiles and other goods listed in Annex 3 to its Protocol of Accession[7].

- In accordance with Article 3.5(a) of the Agreement on Import Licensing Procedures, please provide information on the administration of the restrictions, the import licences granted for 2002 and the first four months of 2003, and import statistics for those same periods."

1.7 The representative of the European Communities, echoing the concerns expressed by the United States regarding the lack of notifications, said that her delegation too regretted that only two-thirds of Members had met their notification obligations under the Agreement and therefore encouraged the Chairman once again to continue working with the Secretariat to find a solution to this situation. As concerned the request by the United States for clarification following the European Communities' responses to the US contained in G/LIC/Q/EEC/2, she had taken note and would give a reply at the next meeting.

1.8 The representative of Turkey, in response to the US questions, recalled the general explanation and remarks made by his delegation at the September 2002 meeting, drawing the attention of the US to Turkey's views expressed in the SPS Committee with regard to the document at issue, i.e. "kontrol belgesi". This document was granted by the Turkish Ministry of Agriculture on a simple request by the importer indicating that the imported agricultural goods were fully in conformity with the SPS legislation. Therefore it was not a restricted or discretionary document, and was only a safety measure. His delegation had requested his authorities to provide written answers to the questions posed by the US and also to complete its notifications to the Committee.

1.9 The representative of Mexico said that his authorities were in the process of preparing their notification, to be submitted as soon as possible to this Committee.

1.10 The representative of Egypt, making a general comment concerning the concept of notification and the acceptability of the contents of a notification, said that the kinds of notifications that the Committee received were either very comprehensive with a lot of detailed information on import licensing requirements, or very brief stating that the country concerned did not apply any import licensing system. He noted that the latter category of notification was not commented upon by Members and was more or less accepted as it was, although he did not understand how a country could not have an import licensing system. For example, a multilateral environmental agreement that most WTO Members were parties to, such as the Convention on International Trade in Endangered Species (CITES), included an obligation of import licensing when importing endangered species of wild fauna and flora. Some parties to this Convention, in their notifications to this Committee, stated that they did not have any import licensing, while others notified it to the Committee as an import licensing requirement. This kind of non-coherence was never discussed in the Committee. He asked whether there was logic in this kind of duplication.

[7] WT/L/432.

1.11 The representative of Pakistan, responding to the delegate from Egypt, said that he understood the ambiguity in this situation. For example, Pakistan had had an import licensing system whereby every importer was required to obtain an import licence from the office of the Chief Controller of Imports and Exports (CCIE) for any imports into the country, but after the promulgation and implementation of the new order in the late 1980s or early 1990s, this licensing system had been disbanded and importers were no longer required to seek prior permission from the office of the CCIE. Henceforth there was no legal requirement and any importer wishing to import could open a letter of credit straight away and conduct his business. As regarded the second element of the question, he thought that there were certain imports in virtually all Member countries that were subject to import licensing, notified by many under GATT Article XX, which were acceptable in the multilateral trading system, such as import licensing requirements maintained for religious, health, moral or security reasons, or those maintained pursuant to multilateral agreements, for example on imports of hazardous chemicals. There were no quantitative restrictions or other restrictions on such imports and it was a requirement with a view to monitoring on behalf of the Government imports of products which fell under GATT Article XX. Pakistan had notified Article XX requirements which applied to a short list of items which necessitated importers to inform the Government that they intended to import those products into the country; the authorities at the borders required these importers to provide certain information. He did not think that this was an import licensing system. In general the import licensing system in Pakistan had been terminated, though for some Article XX imports there were certain requirements with a view to monitoring such imports. This, in his view, was well within any Member's rights.

1.12 The Chairman, responding to the comments and suggestions made by the United States and the European Communities regarding the work of the Secretariat and the Chairman in order to facilitate Members in complying with their notification obligations, said that as had been stated repeatedly by him as well as by his predecessors, the Committee was aware that compliance with notification obligations was an important issue for the work of this Committee. He was therefore pleased to see more positive and concerted attitudes towards ensuring that all Members continued to make progress in fulfilling their notification obligations. As he had already explained in his initial remarks, the Secretariat had made considerable efforts to encourage Members to fulfil their notification obligations by sending out reminders, convening informal consultations, assisting in the preparation of notifications etc., and would continue to do so. He hoped that the Secretariat would receive more positive attitudes from Members and that more notifications would be submitted to the Committee to make its work more fruitful.

1.13 The representative of China thanked the Chairman and the Secretariat for the efforts made in preparing for this meeting. As concerned the comments and questions received that morning from the United States on China's import licensing system, he said that he would forward them to his capital.

1.14 The Chairman recalled that according to the Understanding on Procedures for the Review of Notifications in this Committee, all Members were required to submit their questions or replies in writing and send copies of those questions or replies to the Secretariat for circulation to all Members.

1.15 The Committee took note of the statements made.

2. Notifications

(i) Notifications under Articles 1.4(a) and 8.2(b) of the Agreement (publications and legislation)

2.1 The Chairman recalled that Articles 1.4(a) and 8.2(b), and procedures agreed to by the Committee, required all Members to publish their laws, regulations and administrative procedures relevant to import licensing, and submit copies of any relevant publications or laws and regulations upon becoming a Member of the WTO. Any subsequent changes to these laws and regulations were

also required to be notified. He noted that as of the date of this meeting, only a total of 106 Members (counting each of the EC member States individually) had submitted legislative notifications. This included two notifications received from Mongolia and Sri Lanka[8] that week, which would be available for review at the next meeting. He urged all Members which had not yet provided any information of their laws and regulations relevant to import licensing to submit their notifications without further delay.

2.2 The Chairman said that notifications from 14 Members were before the Committee for review, received from China (G/LIC/N/1/CHN/1 and Add.1), Ecuador (G/LIC/N/1/ECU/1), the European Communities (G/LIC/N/1/EEC/2/Add.4), Hong Kong China (G/LIC/N/1/HKG/5), Lithuania (G/LIC/N/1/LTU/1), Morocco (G/LIC/N/1/MAR/1/Add.1), Namibia (G/LIC/N/1/NAM/1), Saint Lucia (G/LIC/N/1/LCA/1), Senegal (G/LIC/N/1/SEN/1), Slovak Republic (G/LIC/N/1/SVK/1), Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) (G/LIC/N/1/TPKM/3/Rev.1), United States (G/LIC/N/1/USA/2), Venezuela (G/LIC/N/1/VEN/1) and Zambia (G/LIC/N/1/ZMB/1), and that copies of laws and regulations submitted under these provisions were available in the Secretariat for consultation by interested Members.

2.3 The representative of the European Communities thanked China for the notification of its legislation on import licensing. Her delegation welcomed the fact that the procedure and the timetable for issuing licences for quotas seemed to have been fully respected by China, and found this to be a positive element. However she wished to reflect some concerns expressed by EC operators in terms of transparency, as her delegation had already indicated in September 2002, particularly regarding procedures to be followed and criteria to be met to obtain licences, as well as regarding the management of these licences.

2.4 The Committee took note of the notifications and statements made.

(ii) Notifications under Article 7.3 of the Agreement (Replies to the Questionnaire on Import Licensing Procedures)

2.5 The Chairman said that notifications from 26 Members were before the Committee for review, received from China (G/LIC/N/3/CHN/1), Czech Republic (G/LIC/N/3/CZE/1/Add.1), Ecuador (G/LIC/N/3/ECU/1/Add.1 and ECU/2), Estonia (G/LIC/N/3/EST/3), European Communities (G/LIC/N/3/EEC/5 and Add.1 and Corr.1), Hong Kong China (G/LIC/N/3/HKG/6), Jamaica (G/LIC/N/3/JAM/1/Add.2), Kenya (G/LIC/N/3/KEN/2), Liechtenstein (G/LIC/N/3/LIE/4/Add.1), Lithuania (G/LIC/N/3/LTU/1), Macao China (G/LIC/N/3/MAC/5), Malawi (G/LIC/N/3/MWI/1/Add.1), Morocco (G/LIC/N/3/MAR/3), Namibia (G/LIC/N/3/NAM/4), Oman (G/LIC/N/3/OMN/1/Add.1), Poland (G/LIC/N/3/POL/2), Saint Lucia (G/LIC/N/3/LCA/1), Senegal (G/LIC/N/3/SEN/2), Slovak Republic (G/LIC/N/3/SVK/1), South Africa (G/LIC/N/3/ZAF/4), Switzerland (G/LIC/N/3/CHE/4/Add.1), Chinese Taipei (G/LIC/N/3/TPKM/1/Rev.1), Tunisia (G/LIC/N/3/TUN/3/Add.3), Uruguay (G/LIC/N/3/URY/2/Rev.1), Venezuela (G/LIC/N/3/VEN/1/Corr.1 and Corr.2) and Zambia (G/LIC/N/3/ZMB/1). In addition, since the airgram convening this meeting had been issued, the Secretariat had received two notifications from Mongolia[9] and Sri Lanka[10], which would be available for review at the next meeting.

2.6 As concerned the current status of notifications under Article 7.3, the Chairman informed the Committee that since the entry into force of the WTO Agreement, replies to the Questionnaire had been received from a cumulative total of only 105 Members (counting EC member States individually). The Agreement required all Members to submit replies to the Questionnaire, annually,

[8] Circulated in G/LIC/N/1/LKA/1.
[9] Circulated in G/LIC/N/3/MNG/1.
[10] Circulated in G/LIC/N/3/LKA/1.

by 30 September. However only 57 Members (EC member States counted separately) had made notifications under this Article in 2002, and only ten Members had notified in 2003 up to the date of this meeting. Noting that notifications were overdue from many Members, he requested Members to submit their notifications without any further delay. He further reminded Members that even those which had not made any changes to their import licensing procedures since their previous notification were required to notify this fact to the Committee.

2.7 The representative of Australia welcomed China's notification (G/LIC/N/3/CHN/1) and said that her delegation believed that there might be some changes to the outline of China's import licensing system, i.e. information given in reply 1 of their notification, hence she requested China to provide a revised overview indicating which agencies were responsible in the new system for administering tariff rate quotas, import quotas etc. Her authorities were still interested in China's import registration scheme on aluminium and therefore would appreciate a response to the questions that her delegation had posed informally to China at the September 2002 meeting.

2.8 The representative of China said that in early March 2002 there had been a restructuring of the Chinese Government organisations at the central level, and that this process of restructuring was still underway. He promised that Australia's concerns would be conveyed to the relevant government agency now responsible, i.e. the Ministry of Commerce, instead of the original MOFTEC. He hoped that his authorities would provide the Committee with input for further discussion. Thanking the delegate of the European Communities for her comments and questions raised, he said that given the ongoing restructuring of China's administrative system covering import licensing, it would be advisable to wait until the new functions of the Government agencies were clear, after which the Committee would be able to have a more meaningful exchange of views.

2.9 The Committee took note of the notifications and statements made.

(iii) Notifications under Article 5 of the Agreement (new import licensing procedures, changes to existing licensing procedures and reverse notifications)

2.10 The Chairman recalled that under paragraphs 1-4 of Article 5, Members which instituted licensing procedures or changes in these procedures were required to notify the Committee of such within 60 days of publication of these procedures, and that paragraph 2 of Article 5 listed the information that should be included in such notifications. Members also had to submit copies of publications in which the information required in Article 1.4 would be published.

2.11 The Chairman said that three notifications were before the Committee for review, received from Indonesia (G/LIC/N/2/IDN/1), Saint Lucia (G/LIC/N/2/LCA/2) and the United States (G/LIC/N/2/USA/1).

2.12 The representative of the United States said that he had an extensive list of questions concerning the notification from Indonesia which he would submit to the Secretariat for circulation to all Members.[11] As the delegation of Indonesia had only recently received these questions from the United States, he did not expect a response at this meeting, but hoped that Indonesia would provide a written reply to the US at some future point. Indonesia's submission, G/LIC/N/2/IDN/1, raised a number of questions concerning the actual operation of the licensing provisions notified, and did not appear to fully reflect the scope and level of the measures as they were being experienced by exporters. On 22 October 2002, Indonesia had implemented an import licensing regulation, Decree No. 732/2002 of the Minister of Industry and Trade on Procedures for Importing Textiles. The US was seriously concerned that the import licensing requirement established by the Decree was restricting and distorting trade contrary to the Agreement on Import Licensing Procedures. When his

[11] Subsequently circulated in G/LIC/Q/IDN/1.

authorities had raised this issue bilaterally in November 2002, they had been told that the measure was simply a requirement for importers of textiles to re-register with the Ministry of Industry and Trade, and that the import licensing system was being used to help overcome weaknesses in Indonesia's Customs Service and to combat anti-competitive behaviour and smuggling. The US review of the Decree indicated, however, that various provisions went far beyond a registration requirement or licensing procedure, in the following manner: textile fabrics could only be imported by local textile producers; imports could only be used as raw material or supplements for the production process of the importers-producers and could not be sold or transferred to others; all authorized importers had to seek approval from the Ministry of Industry and Trade for the amount and the time schedule of their imports; importers also had to submit a monthly report on their imports to the Ministry of Industry and Trade. Failure to submit monthly reports would result in the revocation of import licences, according to the Decree. These limits on the use of imported textiles restricted the amount and type of imports of these products. The ban on sale of imported textiles in Indonesia and the requirement that imports only could be used as raw materials or auxiliary materials for production processes appeared to provide imported textile products less favorable treatment than textiles produced in Indonesia. Such restrictions appeared to conflict with the provisions of Articles III and XI of the GATT as well as Article 7 of the Agreement on Textiles and Clothing, which required all Members to abide by GATT 1994. The US had serious additional concerns regarding whether the provisions of the Agreement on Import Licensing Procedures were followed in issuing the Decree. There was no advance notice to the Committee, nor notification in a timely manner after implementation, which occurred on 22 October 2002. The notification itself, which had been circulated on 14 April 2003, did not appear accurate and the US believed was missing attachments. It was not clear whether the required licences were automatically granted or not, assuming a firm met the conditions of the Decree. Nor was it clear whether the licences were valid indefinitely if a firm filed the required monthly reports, or whether firms needed to renew the licences. If firms needed to renew licences, what was the procedure for doing so? Furthermore, the required monthly reports appeared to require firms to provide excessive amounts of information, and possibly to require firms to provide business-confidential information. As a Member with an interest in textiles trade, the US requested additional information and explanations from Indonesia on the operation of this licensing system, and all relevant information concerning the following: (i) the administration of the restrictions; (ii) the import licences granted over a recent period; (iii) the distribution of such licences among supplying countries; and (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing.

2.13 The representative of Indonesia thanked the United States for the questions raised, which would be conveyed to his capital for further clarification. The following was therefore a preliminary response. With respect to the US' concern that the import licensing requirements established by the said Decree were restricting and distorting trade contrary to the Agreement on Import Licensing Procedures, he said that after careful study of the requirements, the Indonesian authorities were of the view that they were not trade-restricting or distorting. They firmly believed that the import licensing requirements established by the Decree were not contradictory to the Agreement. As had been stated in their consultations with the US in November 2002, it concerned simply a requirement for importers of textiles to re-register with the Ministry of Industry and Trade; the import licensing system was being used to help overcome weaknesses in Indonesia's customs services, to combat anti-competitive behaviour and smuggling. His authorities had considered many instruments to deal with smuggling which adversely affected fair trade and domestic products, distorted the market and significantly reduced Government revenue. His authorities considered import licensing procedures to be the best solution to combat smuggling. He hoped that the US would understand this situation. As regarded the US' view that various provisions of the Decree went far beyond a registration requirement or licensing procedure, as textiles could only be imported by local textile producers, he informed the US that nothing in the Decree discriminated between local and foreign producers and that they had the same opportunities as long as they met the requirements. According to Article 2.3 of the Decree, imported textiles could only be used as raw materials or supplements for the production process of the

importers-producers and could not be sold or transferred to others. This was one of the tools that Indonesia used to control legal imports and contraband. According to Article 7 of the Decree importers must also submit a monthly report on their imports to the Ministry of Industry and Trade and failure to do so would result in the revocation of import licences. As stated in the covering letter submitting Indonesia's notification, his delegation had conveyed their apology for the delay in notifying this Decree to the Committee. As concerned the US' comment that the notification itself did not appear accurate and was missing attachments, he said that he had checked the notification carefully but had not seen any missing attachments. However he requested that the US specify which attachments they felt were missing. He firmly believed that the required licences were automatically granted as long as the company concerned met the requirements of the Decree. A company was only required to provide the amount and category of textiles to be imported and the realisation of imports, but not any business-confidential information. The US was concerned that these limits on the use of imported textiles restricted the amount and type of imports of these products; that the ban on sale of imported textiles in Indonesia and the requirement that imports could only be used as raw or auxiliary materials for production processes appeared to provide imported textile products less favourable treatment than textiles produced in Indonesia; and that such restrictions appeared to conflict with the provisions of Articles III and XI of the GATT as well as Article 7 of the Agreement on Textiles and Clothing. He was not in a position to provide any response to this question at this meeting but would convey it, together with the rest of the questions, to his capital for further clarification.

2.14 The Committee took note of the notifications and statements made.

3. Other business

(i) Requests from the Chairman of the Working Group on Trade and Transfer of Technology and the Chairman of the Special Session of the Committee on Trade and Development

3.1 The Chairman informed the Committee that he had received two letters, from the Chairmen of the above WTO bodies, requesting information on any discussion, submission or other developments relating to trade and technology transfer, and special and differential treatment, that had taken place in this Committee, and that he had replied to both Chairmen that there had been no discussions, submissions or other developments relating to either area.

(ii) Date and agenda of the next meeting

3.2 The Chairman informed the Committee that the Secretariat had reserved 2 October 2003 for the next meeting of the Committee, on the understanding that additional meetings would be convened if necessary. Since it would be the last meeting of the Committee for that year, the agenda for that meeting would include the second transitional review of China, pursuant to Section 18 of the Protocol of Accession of China (WT/L/432).

3.3 The Committee took note of the above.

(iii) Election of officers

3.4 The Committee elected Miss Philippa Davies (Jamaica) as Chairperson of the Committee by acclamation, to hold office until the end of the first meeting of 2004, under Rule 12 of the Committee's Rules of Procedure (G/L/147). It also elected Mr. Lucien Mazzega (France) as Vice-Chairman by acclamation.

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