WORLD TRADE ORGANIZATION

RESTRICTED

G/LIC/M/19
18 May 2004

(04-2192)

Committee on Import Licensing

MINUTES OF THE MEETING HELD ON 5 MAY 2004

Chairperson: Miss Philippa Davies (Jamaica)

The Committee on Import Licensing held its nineteenth meeting on 5 May 2004. The agenda proposed for the meeting, contained in WTO/AIR/2301, was adopted as follows.

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

1.1 The Chairperson informed the Committee that compliance with notification obligations under the Agreement on Import Licensing Procedures remained generally low. As of the date of the meeting, out of a total Membership of 147 (counting each of the EC member States individually), there remained 24 Members who had not submitted any notification since joining the WTO; Members which had not submitted any notification under the Agreement were Angola, Belize, Botswana, Central African Rep., Congo, Congo, Dem. Rep., Djibouti, Egypt, Guinea, Guinea Bissau, Israel, Kuwait, Lesotho, Macedonia, Mauritania, Mozambique, Myanmar, Papua New Guinea, Rwanda, St. Vincent & the Grenadines, Sierra Leone, Solomon Islands, Tanzania and Thailand. Except for Macedonia which had become a Member in April 2003, and seven others which had been Members in 1996 or 1997, others had been Members since 1995. Only 113 Members had submitted notifications of laws and regulations (under Articles 1.4(a) and/or 8.2(b)); there remained 34 Members who had yet to submit a notification to the Committee on Import Licensing of their laws and regulations relevant to import licensing. Only a cumulative total of 109 Members had submitted

replies to the Questionnaire[1] (under Article 7.3) since the entry into force of the WTO Agreement. For Article 7.3 notifications, the annual deadline of 30 September was not often respected by many Members; for example, Article 7.3 notifications had been received from only 46 Members in 2000, 38 Members in 2001, 56 Members in 2002, 40 Members in 2003, and from eight up to the date of this meeting this year. Only 43 Members had notified new licensing procedures or changes in existing procedures (under Paragraphs 1-4 of Article 5); of this, two Members (Mexico and Papua New Guinea) had notified changes to import licensing procedures without submitting the initial notifications of legislation or replies to the Questionnaire. 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. Compliance with the notification obligations under this Agreement remained low despite efforts to improve the situation.

1.2 The Chairperson said that 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, and followed this list up with periodic reminders (twice a year) to those Members who had not submitted the required notifications during the year. In addition, several communications had been sent to delegations by previous Chairpersons and herself in order to remind them of the notifications due. Delegations had been requested to indicate to the Secretariat what kind of problems they faced in complying with the notification obligations, and to identify any technical assistance needs in this area. However, up to the date of this meeting, no Member had requested any technical assistance to fulfil these obligations.

1.3 The representative of the United States said that he appreciated the submissions that had been provided by Members since the last meeting, and especially those that had notified for the first time. Notifying an import licensing system or lack of one was central to the transparency obligations of this Agreement. In particular, he appreciated the responses to their written questions received from Indonesia and Turkey, and responses that he had received the day before the meeting from China, Bahrain and the United Arab Emirates. Such notifications and responses were essential elements of WTO Members' obligations and tangible evidence of the respect that 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. The United States thanked the Chairperson and the Secretariat for their continuing efforts to encourage compliance by sending reminders to Members on notifications and responses to questions. The United States believed that the efforts of the Chairperson and Secretariat had significantly improved the notification situation, and they continued to encourage them.

1.4 The Committee took note of the statement made.

1.5 The Chairperson said that since the last meeting several documents containing either questions to or replies from Members had been circulated in the G/LIC/Q/- series. These were questions to Brazil from the United States in G/LIC/Q/BRA/1, questions to China from the United States in G/LIC/Q/CHN/8, questions to Indonesia from the United States in G/LIC/Q/IDN/3, questions to Indonesia from Australia in G/LIC/Q/IDN/4, replies from Indonesia to the United States in G/LIC/Q/IDN/2 and G/LIC/Q/IDN/2/Add.1, and replies from Turkey to the United States in G/LIC/Q/TUR/2. She informed the Committee that the Secretariat had reminded Brazil and Indonesia of these questions. She further requested delegations that were in a position to provide replies to the questions posed since the last meeting, or prior to the last meeting, to do so at this meeting, keeping in mind that under the procedures adopted in the Committee (G/LIC/4) they were required to provide replies, in writing, to those delegations that had posed questions, with copies to the Secretariat. Copies of replies received by the Secretariat would be issued in the same document series.

[1] The Questionnaire is annexed to document G/LIC/3.

1.6 The representative of Brazil said that written responses to questions from the United States circulated in document G/LIC/Q/BRA/1 would be provided after this meeting[2] and that the notifications relating to import licensing requirements for soda ash and lithium carbonate would be submitted to the Committee soon.

> As concerned soda ash, the United States was of the view that the Ministry of Justice Regulation 169 violated Article 1.6 of the Agreement on Import Licensing Procedures, inasmuch as the importation of the product was subject to preliminary authorization by the Federal Police Department and by the Overseas Trade Department (SISCOMEX). Article 1.6 of the Agreement, as rightly pointed out by the United States, required that applicants should have to approach only one administrative body in connection with an application. He said that the Overseas Trade Department (SISCOMEX) was not an administrative body in the sense of Article 1.6 but merely a computerised databank in which a wide range of information on import/export transactions were stored. SISCOMEX was hence an instrument, a computer programme, used by the Federal Police Department when granting import licences for products such as soda ash. The only administrative body in charge of granting preliminary authorization for the importation of soda ash was thus the Federal Police Department, which used SISCOMEX in order to accomplish this task. The need for the preliminary authorization by the Federal Police Department derived from the fact that soda ash could be used to transform cocaine into "crack". For this reason, there was a severe control in Brazil not only on imports and exports, but also on the production, storage, buying, selling, etc., as stated in Law 10.357 of 27 December 2001. Besides the Agreement on Licensing Procedures, such measures were also based on Article XX(b) of GATT 1994. He believed that this clarified any doubt that Ministry of Justice Regulation 169 did not violate Article 1.6 of the Agreement.
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> The second question from the United States concerned import licensing requirements in Brazil established by Law 6189 and Decrees 2464 and 7781. In the case of lithium carbonate, the reason behind such a requirement was mainly technical as some components of lithium, once enriched, could have an application in the production of nuclear energy. For this reason, imports of lithium carbonate had been under the control of Brazil's National Nuclear Energy Commission (CNEN) since the 1970s. The import licensing requirements had not, however, prevented the normal flow of imports of lithium carbonate into Brazil and current suppliers of the product included Germany, Italy, and the United States, which in 2003 and up to March 2004 had been the biggest supplier. He said that these were preliminary responses to the United States' questions and that any further requests for clarification on this would be forwarded to his capital.

1.7 The representative of the United States said that he looked forward to seeing the written response from Brazil for any follow-up on this matter.

1.8 As concerned questions from the United States to China circulated in G/LIC/Q/CHN/8, the Chairperson informed the Committee that China had provided responses to these questions only the day before the meeting. Document G/LIC/Q/CHN/10 containing these replies was available, in English only, in the room and would be circulated shortly.

1.9 The representative of the United States said that the replies received from China had been sent to his capital and were being studied by his authorities. They planned to have further discussions on the matter, if necessary, at or before the next Committee meeting.

1.10 The representative of China said that they would be glad to engage in further discussions with the United States on the issues raised.

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[2] Circulated in document G/LIC/Q/BRA/2.

1.11 The representative of the United States said that at the May and October 2003 meetings of this Committee, his delegation had expressed concern that Decree 732/2002 of the Minister of Industry and Trade of Indonesia pertaining to import licensing for textiles was restricting and distorting trade, contrary to the Agreement on Import Licensing Procedures. The United States appreciated the initial responses of Indonesia circulated in G/LIC/Q/IDN/2 and Add.1. However, his authorities remained concerned that two provisions of the Decree might be overly restrictive, i.e. the decision to grant import licences only to textile producers with a local production capacity, and the decision to bar the transfer of imported textiles to other private parties. Consequently, the United States had posed some additional questions to Indonesia at the October 2003 meeting which had been circulated in G/LIC/Q/IDN/3. The United States looked forward to Indonesia's responses.

1.12 The representative of Indonesia said that responses to the follow-up questions from the United States on Indonesia's import licensing requirements for textiles would be submitted to the Secretariat after this meeting.[3] He said that Decree No 732/2002 aimed only to provide administrative import procedures, with the main purpose of combating smuggling activities that caused anti-competitive behaviour, unfair trade in the domestic market, an adverse impact on the domestic market, loss of government revenue, and an adverse impact on investment and labour. Smuggling activities in Indonesia had significantly increased since 2000 and had been a serious problem. According to estimates by the University Research Institution of Indonesia, smuggled textiles entering into the Indonesian market had resulted in the loss of Rupiah 50 trillion (US$ 5.8 billion) in terms of government revenue and caused injury to 7,000 textile companies which absorbed more than 3.5 million labour and with an investment value of Rp. 132 trillion (US$ 15.35 billion). Smuggling activities were closely related to the nature of Indonesia, which was a large country consisting of more than 17,000 big and small islands. Indonesia had many borders far beyond the ability and control of customs through which smuggled textile products entered the Indonesian market. These included not only textile products smuggled by illegal companies but also those smuggled into the country by legal companies in order to avoid the payment of customs duties. This had resulted in a substantial increase in imports of illegal textile products, which could not be curbed by trade remedy instruments such as anti-dumping, countervailing or safeguards. Indonesia was concerned that smuggling of textiles had adversely affected many business activities as well as employment and government revenue. Indonesia believed that these problems had to be resolved by all means, including import licensing. Indonesia fully considered the importance of the role of customs offices and police in cooperation with the Ministry of Trade and Industry (MOIT) in combating smuggling. In this regard, the MOIT had played its role by using import licensing procedures to prevent the distribution of illegally imported textile products in the domestic market. Of various administrative procedures, his authorities still believed that import licensing was the only effective means to administer controls on all textile importers, and all kinds of imported products as mentioned in the Decree. By this policy, the government could easily identify and combat illegal textiles trade. As concerned the question of whether the Decree was trade-restricting according to Article 3.2 of the Agreement on Import Licensing Procedures, Indonesia was of the view that it was not so since:

> (i) no person, firm or institution would be refused an import licence as far as they fully complied with all the requirements as contained in the Decree (Article 2.2(a)(i) of the Agreement). The requirements they had to comply with to be approved as a Textile Producer Importer were to attach to the application the following documents, which were normally in the possession of companies: industrial business licence/industry registry number or other similar business permits from other related Ministries; special textiles and textile product importer identity number (NPIK-TPT); producers-importer identity number (API-P) or approved importer identity number (API-P); corporate registry number (TDP); taxpayer code number (NPWP); and statement of plan for the need of raw material or auxiliary materials and marketing of products for one year, signed by management of the company.

[3] Circulated in document G/LIC/Q/IDN/5.

(ii) Article 4 of the Decree stated that the approval or rejection of the application for a licence should be issued no later than ten working days from the date of receipt of application. The period for processing applications provided for in the Decree was much less than the 30 days provided for in Article 3.5(f) of the Agreement, hence no burden for companies to apply a licence.

(iii) The Decree did not limit the number of companies, institutions or persons who could have import licences as far as they fully complied with the requirements, nor limit volume to be imported by each company. There had been as many as 315 importers that had obtained import licences under these procedures and import licences were still open to other companies that would like to be involved in the import of textiles.

1.13 The representative of the United States thanked Indonesia for the information given and said that any further follow-up on the matter would be decided after receiving the response in writing.

1.14 The representative of Australia informed the Committee that the Indonesian delegation had just provided him with written responses to the questions that Australia had posed in document G/LIC/Q/IDN/4, and that the responses would be studied carefully by his authorities.[4]

1.15 The representative of the United States expressed his appreciation to Turkey for the responses provided in G/LIC/Q/TUR/2.

1.16 The Chairperson recalled that several other Members had also received questions on their licensing systems prior to the last meeting. For example, replies were due to the United States from the following Members: Antigua & Barbuda (to questions circulated in G/LIC/Q/ATG/1 in October 2001); Bahrain (to questions circulated in G/LIC/Q/BHR/1 in November 2000); Chad (to questions circulated in G/LIC/Q/TCD/1 in November 2000); China (to questions circulated in G/LIC/Q/CHN/4 in May 2003); Ghana (to questions circulated in G/LIC/Q/GHA/1 in October 2001); Oman (to questions circulated in G/LIC/Q/OMN/1 in June 2001); and from the United Arab Emirates (to questions circulated in G/LIC/Q/ARE/1 in November 2000). In addition, Colombia had posed some questions to Chile at the last meeting (G/LIC/M/18, paragraphs 5.1-5.3). The Secretariat had also reminded these delegations of these questions. She informed the Committee that replies from Bahrain and the United Arab Emirates had been sent by the two delegations to the United States the day before the meeting, with copies to the Secretariat[5]. 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).

1.17 The representative of the United States said that as the communications from Bahrain and the United Arab Emirates had been received late he could not provide a response to them yet, hence he would have to revert to them at or before the next meeting.

1.18 The representative of China noted that the questions contained G/LIC/Q/CHN/4 from the United States to China were already covered by their replies provided in G/LIC/Q/CHN/10, and said that in case the United States had more questions his delegation would be glad to provide their replies.

1.19 The Chairperson requested other Members who had not yet responded to the questions posed to do so in writing with copies to the Secretariat.

[4] Circulated in document G/LIC/Q/IDN/6.

[5] Pending clarification from Bahrain and the United Arab Emirates these responses had not yet been circulated.

1.20 The Committee took note of the responses and the statements made.

2. Notifications

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

2.1 The Chairperson 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, 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. She noted that even those Members which did not apply import licensing procedures or had no laws or regulations relevant to the Agreement were required to notify the Committee of this fact in order for it to obtain a complete overview of the licensing regimes of all Members. She urged all Members which had not yet provided any information on their laws and regulations relevant to import licensing to submit their notifications without further delay.

2.2 The Chairperson said that there were notifications from nine Members before the Committee for review, received from Armenia (G/LIC/N/1/ARM/1), China (G/LIC/N/1/CHN/2 & 3), Croatia (G/LIC/N/1/HRV/2), El Salvador (G/LIC/N/1/SLV/1), Ghana (G/LIC/N/1/GHA/1), Macao China (G/LIC/N/1/MAC/2), Suriname (G/LIC/N/1/SUR/1), Turkey (G/LIC/N/1/TUR/4), and Zambia (G/LIC/N/1/ZMB/2). Copies of laws and regulations submitted under these provisions by Armenia, China, the Dominican Republic, El Salvador, Macao China and Turkey were available for consultation in the Secretariat. In addition, the Secretariat had received a notification from the Dominican Republic (G/LIC/N/1/DOM/1) which was available for the time being in Spanish only and which would be reviewed at the next meeting.

2.3 The Committee took note of the notifications.

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

2.4 The Chairperson said that there were notifications from 17 Members listed in the airgram, received from Armenia (G/LIC/N/3/ARM/1 & Add.1), Brazil (G/LIC/N/3/BRA/3), China (G/LIC/N/3/CHN/2), Croatia ((G/LIC/N/3/HRV/2), Cuba (G/LIC/N/3/CUB/2), the European Communities (G/LIC/N/3/EEC/6 & Add.1 & Corr.1), Ghana (G/LIC/N/3/GHA/3), Guyana (G/LIC/N/3/GUY/2), Hong Kong China (G/LIC/N/3/HKG/7), India (G/LIC/N/3/IND/6), Japan (G/LIC/N/3/JPN/3), Macao China (G/LIC/N/3/MAC/6), Panama (G/LIC/N/3/PAN/2), Philippines (G/LIC/N/3/PHL/4/Add.1), Singapore (G/LIC/N/3/SGP/4), Turkey (G/LIC/N/3/TUR/5) and Zambia (G/LIC/N/3/ZMB/2). In addition, the Secretariat had received a notification from the Dominican Republic (G/LIC/N/3/DOM/2) which was available for the time being in Spanish only and which would be reviewed at the next meeting.

2.5 Similarly to the situation with respect to the notifications of legislation, notifications under this provision were overdue from many Members. Even those Members which had not made any changes to their import licensing procedures since their previous notification, or which did not apply import licensing procedures, were required to notify this fact to the Committee. The Chairperson therefore requested Members to submit their notifications without any further delay and said that the Questionnaire used for these notifications was annexed to document G/LIC/3.

2.6 The representative of Canada referred to reply 2 of the notification from Brazil, circulated in document G/LIC/N/3/BRA/3, which stated that the products subject to non-automatic import licensing were mentioned in the communications published by their Ministry of Foreign Trade, and

asked whether Brazil intended to submit a more detailed notification as to the specific products subject to these non-automatic import licensing procedures. He noted that the notification had a general description of products that were subject to this procedure, and said that it would be useful to have a detailed list of the products as well as a notification to the Committee with such information.

2.7 The representative of Brazil said that he would convey the request to his capital and that he did not foresee any problem in providing more detailed information on the notification.

2.8 The representative of Canada referred to the notification from China, circulated in G/LIC/N/3/CHN/2, reply 6.III of which, relating to tariff rate quotas, stated that *"after getting consent from the importers that obtain quotas, list of quota-holders can be provided to foreign authority or promoting agencies for export upon request"*. In reviewing this notification, Canada had a question which had now been partially addressed by the responses given by China to the United States, contained in G/LIC/Q/CHN/10; the response from China to the additional question 1 regarding its TRQ administration stated that *"enterprises receiving a TRQ take the amount of quota granted to these enterprises as business secret."* Canada took note of this response that the amount of quota was information that was business secret and wished to know whether it was possible to obtain, upon request, information as to who the quota-holders were. Canada considered it would be useful to obtain the names of those quota-holders from an export promotion perspective. In the case of certain products of interest to Canada, his authorities had sought to obtain such information from China but it had not seemed possible. Canada therefore requested China to confirm what was stated in their reply to the Questionnaire, i.e. that not the amount, but the list of quota-holders, was something that could be provided upon request.

2.9 The representative of China said that the question would be conveyed to his capital.

2.10 The representative of the United States, referring to the frequently cited "ITC(HS) Classifications of Export and Import Items, 2002-2007" in the notifications made by India, said that while this document existed in a query-based format under the Directorate General of Foreign Trade's (DGFT) website (http://dgft.delhi.nic.in/itchs2002web.htm), the entire document did not appear to be available on the DGFT's website. Moreover, although there was an indication on the homepage (http://dgft.delhi.nic.in/) that the ITC(HS) was available at the "Downloads" link (http://164.100.9.245/exim/2000/download.htm), the ITC(HS) did not seem to be at that link. His delegation wished to know whether the entire ITC(HS) was available anywhere on the DGFT website and if not, whether it could be added in the interests of transparency and as an aid to the trading community.[6]

2.11 The representative of India said that as far as his understanding of the existing website was concerned, a query-based format was being maintained for the ITC(HS) classification of export and import items. As concerned the availability of the entire compendium of ITC(HS) on the website, he said that he would consult the customs authorities in the DGFT and inform the United States in writing through the Secretariat.

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

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

2.13 The Chairperson 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. Paragraph 2 of Article 5 listed the information that

[6] Circulated in document G/LIC/Q/IND/8.

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. Furthermore, paragraph 5 of Article 5 provided the possibility of making counter-notifications where a Member considered that another Member had not notified the institution of a licensing procedure or changes therein, in accordance with paragraphs 1-3 of Article 5.

2.14 The Chairperson said that there were two notifications listed in the airgram, submitted by Jamaica (G/LIC/N/2/JAM/1) and Chinese Taipei (G/LIC/N/2/TPKM/2).

2.15 The representative of the United States, referring to Annex I of the notification from Jamaica, requested a clarification concerning the limitation on the issuance of import licences for "repairs only" for "other (motor vehicle parts – front and back clip)" of tariff heading ex 87.08.99.9 and whether this meant that licences would not be approved for sales and distribution.[7]

2.16 The representative of Jamaica said that the question would be referred back to capital for clarification.

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

3. Other Business

(i) Argentina: Resolution 56/2004 of the Ministry of Economy and Production

3.1 The representative of the United States understood that Argentina's Ministry of Economy and Production Resolution 56/2004, published in the Official Bulletin on 26 January 2004, might subject certain goods listed in the Resolution to an import licensing requirement, and asked whether Argentina intended to notify this measure to the Committee, and if so, when; whether the measure had been implemented and if not, when it was proposed to be implemented; whether it would affect exports from all WTO Members; whether the measure was an automatic or non-automatic import licensing procedure, and if it were the latter, the WTO basis for any restriction on imports; and whether an opportunity to provide comments on the measure would be provided before it was implemented.[8]

3.2 The representative of Argentina said that he would forward the question to his capital and that he would be able to inform the United States of the status of this Resolution and to respond to the questions and concerns expressed by the next meeting.

3.3 The Committee took note of the statements made.

[7] Circulated in document G/LIC/Q/JAM/1.
[8] Circulated in document G/LIC/Q/ARG/1.

(ii) Date of the next meeting

3.4 The Chairperson informed Members that the Secretariat had tentatively reserved 30 September 2004 for the next meeting of the Committee, on the understanding that additional meetings would be convened if necessary.

3.5 The Committee took note of the above.

4. Election of officers

4.1 The Committee elected Ms. Victoria Campeanu (Romania) as Chairperson of the Committee by acclamation, to hold office until the end of the first meeting of 2005, under Rule 12 of the Committee's Rules of Procedure (G/L/147). It also elected Dr. Dayaratna Silva (Sri Lanka) as Vice-Chairman by acclamation.