MINUTES OF THE MEETING HELD
ON 21 SEPTEMBER 1989

Chairman: Mr. R. Molloy

1. The Committee held its twenty-fourth meeting on 21 September 1989. The agenda contained in GATT/AIR/2829 was adopted.

A. Status of signatories and observers

2. The Chairman reported that there had been no change in the status of signatories or observers since the last meeting.

B. Information available on Import Licensing Procedures

3. The Chairman reported that since the last meeting publications containing information on import licensing procedures had been received from Canada, Hong Kong and New Zealand (LIC/3/Add.22). New replies to the GATT Import Licensing Questionnaire in the L/5640 series had been received from Chile (Add.8/Rev.1/Suppl.3), Hong Kong (Add.36/Rev.2 and Rev.3), Hungary (Add.12/Rev.1/Suppl.1), Singapore (Add.33/Rev.1/Suppl.1), and Yugoslavia (Add.20/Rev.2/Suppl.1). He added that the invitation to update notifications in the L/5640 series had asked for replies to be communicated to the Secretariat by 30 September, and the Committee would have a further opportunity to examine these at its meeting in November.

4. The representative of the European Community informed the Committee that the Community had submitted an updated reply to the Questionnaire on behalf of the Benelux countries (L/5640/Add.21/Rev.2).

5. The Committee took note of the information provided.

C. Implementation and operation of the Agreement

6. The Chairman said that in document LIC/1/Add.41 Mexico had notified the Committee that it had transmitted a copy of the Decree Enacting the Agreement on Import Licensing Procedures which was published in the Diario Oficial of Mexico on 21 April 1988, and that in document
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LIC/1/Add.42 Hong Kong had notified the Committee of the introduction of an import licensing system for certain ozone-depleting substances with effect from 1 July 1989.

7. The Committee took note of the information provided.

D. Work programme

8. The Chairman recalled previous discussions of the Committee on the clarification of the definition of the term "import licensing" in Article 1.1. He proposed this issue be merged with the next item on the agenda.

9. The Committee agreed to the Chairman’s proposal.

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

10. The Chairman recalled the exchange of views at the last meeting on the institutional relationship between the Committee and the Negotiating Group on MTN Agreements and Arrangements. Committee members would be aware that a proposal for improving the Agreement had been introduced by the United States and Hong Kong at the meeting of the Negotiating Group on 20 September 1989 (MTN.GNG/NG8/W/53 and LIC/W/49). The Chairman invited the representatives of the United States and Hong Kong to inform the Committee of this proposal.

11. The representative of the United States said the proposal was aimed at strengthening and clarifying the provisions of the Agreement in a comprehensive and practical way, and she highlighted its main aspects.

12. It was proposed to state in the Preamble that import licensing should not be used in a manner contrary to GATT principles and obligations. This idea was implied already in the Agreement, particularly in Articles 1.2 and 1.3, but it was thought appropriate to state it explicitly. It was proposed also in the Preamble that explicit recognition would be given to the provisions of GATT Article XI as they applied to licensing.

13. In Article 2.1, a tightened definition of automatic import licensing was proposed to ensure that this type of licensing procedure was truly automatic. Two new phrases had been added to the definition with this particular objective in mind: "in all cases" and "within a maximum of 10 working days". In addition, a narrowing of the circumstances in which automatic licensing could be used was proposed in Article 2.2(b). Two conditions would have to be met: the circumstances giving rise to the introduction of automatic licensing must prevail and its underlying administrative purpose must not be achievable through other means. To the extent either of these conditions was not met or particular procedures fell outside the new definition, they would necessarily be treated as non-automatic licensing procedures.
14. In Article 3, non-automatic import licensing procedures remained a catch-all category for everything except automatic licensing procedures, but its definition had been implicitly strengthened by virtue of the tighter definition proposed for automatic licensing procedures. A new requirement was proposed in Article 3.2 that non-automatic import licensing procedures correspond in scope and duration to the import restrictions they were used to implement; if an import restriction was imposed degressively for a specific period of time on certain products, the procedures used to implement the restriction should correspond precisely to these same characteristics. Also in Article 3.2, a new requirement was proposed that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer an import restriction; the intention was that administrative procedures themselves should not become a non-tariff barrier to trade. In Article 3.4, a requirement was proposed to publish in advance circumstances in which exceptions might be made to non-automatic licensing procedures, with a publication requirement also for exceptions actually granted.

15. In Article 5.2, a new, comprehensive notification requirement was proposed. All licensing procedures and changes to them would have to be notified to the GATT Secretariat within thirty days of publication. The elements of the notification requirement were spelled out in detail, and these included a requirement that the GATT basis for using a non-automatic licensing procedure should be provided. In addition, a cross-notification provision was included.

16. In Article 8, a review process was proposed whereby the Committee would examine licensing notifications, cross-notifications, replies to licensing questionnaires, and the licensing régimes of signatories. The Secretariat would provide a report to serve as a basis for the review.

17. In addition, recommendations already agreed on by the Committee regarding transparency, publication requirements, time limitations and other procedures covered by Articles 1 and 3 of the Agreement had been strengthened and incorporated in the proposal.

18. The representative of the United States also highlighted a number of suggestions for improving the Agreement that had been made by her delegation in past discussions but which were not included in the proposal. There was no overall degressivity requirement, under which import licensing procedures would have to be phased out over time; there was, however, a requirement that to the extent the import restriction itself was degressive, the licensing procedure should be as well. No separate dispute settlement provision was being proposed; there was a parenthetical reference to dispute settlement in Articles 6 and 7, but this issue could more sensibly be discussed once results from the Negotiating Group on Dispute Settlement were known. Finally, it was not proposed that the Committee could pass judgement on import restrictions themselves; these would remain under the jurisdiction of the relevant GATT bodies.
19. The representative of Hong Kong added that the proposal centred around the key concepts of the neutrality and transparency of import licensing procedures, the proportionality of licensing requirements, and the overall operationality of the Agreement. Increasing the value of membership of the Agreement could be an attraction to wider developing country participation.

20. A number of delegations gave preliminary comments on the proposal.

21. The representative of Mexico said it was important to be quite clear on the exact definition and scope of import licensing. It appeared the proposal would apply substantive provisions when other provisions of the Agreement were insufficient. That would mean that more procedural provisions would have to be added to the existing Agreement.

22. The representative of Australia supported the aim of the proposal to bring greater disciplines over the use of import licensing procedures, particularly non-automatic licensing procedures. The proposal could complement, and help sustain over the longer term, the liberalization of non-tariff measures that was being sought in the Uruguay Round. There were many details of the proposal that warranted close attention.

23. The representative of Japan recalled his delegation's comments in the past that proposals to improve the Agreement should focus on the procedural aspects of import licensing and not on trade restrictions as such. As stated in the Preamble to the Agreement, simplifying and bringing transparency to import licensing procedures was highly desirable. The new proposal had taken into account some of his delegation's previous comments and it was a substantial improvement over earlier proposals. However, his delegation still had difficulties with it and needed further clarification. He said it was not clear whether Articles 3.2, 3.3 and 3.4 were necessary or not, but if they were they should be placed after Article 3.5(a) since they elaborated the contents of this latter provision. Nor was it clear what the exceptions referred to in Articles 3.3 and 3.4. His delegation could accept the establishment of the cross-notification mechanism proposed in Article 5, but it considered a mechanism should be set up to first allow a Party with an interest in supplying a product to request another Party to notify its import licensing procedures on its own initiative and responsibility. The examination proposed in Article 8.2 was not appropriate since it aimed to ensure that trade measures were consistent with the GATT; the review proposed in this Article should be limited to procedural issues covered by the Agreement. Finally, the proposal did not address the question of how more developing countries could be encouraged to participate in the Agreement; technical assistance might be effective in this regard, and should be taken into account.

24. The representative of the European Community expressed sympathy with the general thrust of the proposal and considered it much improved over earlier ones, particularly with regard to what the representative of the United States had indicated had been left out of the proposal. Further clarification was still needed on some points. One was the definition of import licensing, which remained as unclear in this proposal as it did in
the existing Agreement. Another was the wording of Article 3.3, which could leave an opening to the discretionary handling of licensing; for example, small quotas which fluctuated were not fully compatible with other provisions of the Agreement that required the size of quotas to be published. Another concerned the exceptions covered by Article 3.4; if these were made available to all parties they would not be exceptional. His delegation had taken note of the statements made by the representative of the United States that the provisions of Article 8.2 were not intended to require an examination of the compatibility of a trade measure with GATT provisions, but in view of this the proposed wording of these provisions needed further clarification. Also, in view of the establishment of the Trade Policy Review Mechanism (TPRM) it might not be necessary to set up such a thorough and comprehensive review process in the Committee as was suggested by the provisions of Article 8.4 of the proposal.

25. The representative of India recognized the effort put into preparing the proposal, and welcomed its omission of certain elements that had been contained in earlier proposals.

26. The representative of the Nordic countries supported the initiative that was reflected in the proposal. His delegation concurred with the view that the Agreement was fairly generally worded, and considered it would be useful to work towards a more stringent Agreement, but it had some concerns over references in the proposal to the GATT legality of measures administered by import licensing procedures.

27. The representative of the United States replied to some of the comments made. Trying to make a distinction between substantive and procedural provisions was inappropriate. It raised the question of where to draw the line between the two, and her delegation believed in any case that the Agreement already contained substantive provisions. Furthermore, the Punta del Este mandate made no reference to such a distinction. With regard to widening membership of the Agreement, a number of developing countries were already signatories and her delegation encouraged more to sign. At the same time, more benefits for existing and new signatories could be derived from the Agreement if it was revised to make it more meaningful and comprehensive. The question of the definition of import licensing was important and suggestions from other participants would be welcome; efforts in the Committee to clarify the definition in Article 1.1 of the Agreement had not made much progress so far.

28. The proposed obligations in Articles 3.3 and 3.4 were intended in part to discipline exceptions more closely and make them more transparent through a publication requirement. The comment of the representative of the European Community was useful on the compatibility of these proposals with other provisions of the Agreement which discouraged the use of discretionary licensing. An attempt had been made in the proposal to avoid use of the term "discretionary" and to find other ways of addressing the issue it raised, in view of previous discussions that had taken place in the Committee. An illustration of what was meant by "exceptions" in the proposal was a situation in which a country published its procedures and
allocated licences accordingly for a certain level of imports in one instance, but at the next allowed in a higher level of imports; this would be an exception to the general rules, and more transparency and discipline was essential to address some of the practical problems traders were facing in this area. The review provision proposed in Article 8 was not intended to duplicate the TPRM exercise but to make the Committee’s reviews more meaningful.

29. The Chairman summed up the discussion by noting that there was a general welcome in the Committee for the proposal from the United States and Hong Kong, but that most delegations had been able to make only preliminary comments on it at this stage. The style of the proposal facilitated the negotiation of a revised Agreement, and put an onus on other delegations to react to it and, where appropriate, to make other proposals of their own in order to move the process along. The Committee would revert to this issue at its next meeting and, as far as possible and notwithstanding the difficulties of principle some delegations had with the relationship of the work of the Committee to the work of the Negotiating Group on MTN Agreements and Arrangements, it should attempt as pragmatically as possible to avoid duplicating discussions held on this issue in the Negotiating Group.

F. Preparation for the Fifth Biennial Review of the Agreement

30. The Chairman urged signatories to communicate to the Secretariat as soon as possible any additional information they wished to include in the basic document for the Review.

G. Other business

31. The Chairman proposed that the date of the next meeting of the Committee be changed from the 6 to the 23 November in order to coincide with a meeting of the Negotiating Group on MTN Agreements and Arrangements. This was agreed. The Chairman said the order of business for that meeting would be to undertake the Biennial Review of the Agreement, complete the examination of information available on import licensing procedures, finalize the Committee’s annual report to the CONTRACTING PARTIES, and continue discussions on proposals made to improve the Agreement.