DRAFT TYPES OF SOLUTIONS

In addressing itself to solutions appropriate to the various types of specific barrier to trade in industrial products, the Group had before it three proposals aimed at solutions of different scope cutting across the type of measure in force. It was suggested that one contribution would be to define more precisely all of the different types of measures in force. Attention was drawn in the debate to a more comprehensive effort already made in the OECD, which might have application in GATT, to limit the conditions in which import licensing and quota restrictions might be used. Some delegations pointed out that many of the notifications concerned illegal quantitative restrictions, falling within the purview of the Working Group. These delegations proposed that what was needed was not to define or limit use of measures inconsistent with the provisions of GATT but to obtain their removal by an early fixed target date. One delegation suggested that this date should be the end of 1971 when all Kennedy Round concessions entered into effect. Measures not removed by that date should be subject to waivers or appropriate compensation procedures. Rights under Article XXIII should be recognized.

Record of any discussion on legal/illegal measures

1. Licensing

The Group recalled the debate recently held in the Joint Working Group on Residual Import Restrictions and earlier in the Industrial Committee where licensing was thoroughly discussed. The countries which considered licensing as such to be a form of barrier reiterated their view that the cost, delay
and uncertainty to traders involved in any licensing operated as a deterrent in particular to long-term planning for promotion of exports since a threat of restrictive action continued to overhang and influence planning of manufacturers and traders. In their view such measures should be abolished or if necessary replaced by other measures not harmful to trade. Others considered that a fully automatic system of licensing which operated without substantial delays could not be regarded as a restriction at all. Such a system constituted merely a formality no different in kind from other formalities which were in force in all GATT countries and which might be introduced at any time and which were generally admitted not to be quantitative restrictions or special limitations. This formality might in their view be required in order to get appropriate statistics, to give effect to exchange and currency control, to implement health and security regulations, to facilitate collection of taxes or levies, to ensure that trade remained in the hands of qualified traders, to avoid speculation, or to watch over the character of trade with non-contracting parties. It was only in a fraction of all cases of licensing that an element of surveillance over prices or quantity of goods traded entered into the motivation for maintenance of a licensing system, and even here it often served to avoid imposition of outright restrictions under Article XIX. Some countries conceded that where surveillance over price and quantity of goods traded entered into the motivation, licensing might be regarded as a form of restriction. Others maintained that even in such cases licensing, though a restriction, lacked the element of quantitative limitation essential to bring it within the terms as used in Article XI. In their view, licensing could not be regarded as illegal, even though some agreed that its use should be brought within agreed rules. Language in Article VIII recognizing the need to minimize the incidence and complexity of import formalities and to decrease and simplify import documentation requirements proved that licensing was not intrinsically inconsistent with the GATT, in their view.
Some of the countries which regarded licensing of all kinds as a barrier could not accept that such measures were necessary or desirable for statistical purposes and considered that other methods less harmful to trade might be found for accomplishing other legitimate objectives. In their view invoice values offered a more reliable basis for gathering statistics, particularly in view of the tendency of traders to apply for licences for more goods than were currently needed whenever government tended to restrict imports through licences. Moreover it was noted that many licensing systems applied only to selected types of imported products so that the system could not be justified on statistical grounds. While they did not feel that licensing was necessarily inconsistent with GATT in all cases, they pointed to the principle in Article III that requirements affecting imported products should not be applied so as to afford protection to domestic production.

An effort was made to isolate the factors in the situation on which there was agreement and to determine then whether there was a possibility of narrowing the issues. The following emerged:

1. Most countries agreed that licensing could not be said in all cases to constitute a quantitative restriction within the meaning of Article XI. Although licensing might not be illegal, it could in most cases be considered as a barrier to trade.

2. Most countries agreed that a fully automatic licensing system, where the government had no authority to refuse a licence and where licences were granted within forty-eight hours or delivered after the goods had passed the customs, could not be regarded as constituting in itself a restriction on trade, was not harmful to traders and was consistent with the principles and provisions of the General Agreement. Removal of such a system could, nevertheless, be of value to trade partners which, for various reasons, regarded licensing as such or the possible threat of restriction as a barrier to trade.
(3) Most countries agreed that it was legitimate although perhaps not the best way of accomplishing the purpose, to use licensing in conjunction with parallel internal measures to enforce restrictions on internal distribution and use in accordance with the provisions of Article XX or Article XXI.

(4) Objectives and methods concerning which there was no consensus included the use of licensing to regulate the quantity of imports (either in the sense of building up stocks or to avoid excessive accumulation of imports), to watch over or control the level of internal prices (whether in conjunction with fiscal impositions or not), to maintain control over imports from particular country sources, to avoid market disruption etc. Representatives of developing countries pointed out that licensing was often used on products from developing countries while competing products from developed countries were exempted.

(5) Possible outcome of discussion on OECD paper