Committee on Trade in Industrial Products

Working Group 4

DRAFT REPORT OF WORKING GROUP 4
ON NON-TARIFF BARRIERS

Examination of Items in Part 4 of the Illustrative List
(Specific Limitations on Trade)

Revision

1. Working Group 4 was established by the Committee on Trade in Industrial Products in December 1969, to examine the following subjects in the Illustrative List (Annex I to document L/3298): licensing arrangements, quantitative restrictions including embargoes, bilateral agreements, voluntary restraints, motion-picture restrictions including tax matters and screen-time quotas, and minimum prices on textile imports. The Group met from 4 to 8 May under the Chairmanship of Mr. H. Colliander (Sweden).

2. The Group not only had in mind the general terms of reference in regard to the exploratory nature of its work, but wished to emphasize that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products.

3. In accordance with the desire of the CONTRACTING PARTIES, as expressed in their conclusions, that as the work of the Groups proceeds particular attention should be paid to the problems of developing countries, the Group recalled that the Joint Working Group had identified restrictions with respect to which developing countries indicated specific interest in the course of the meeting of that Group as well as the twenty-one items selected by the Group on Residual Restrictions for priority attention. At that meeting some delegations had suggested that illegal restrictions

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1 This revised version incorporates the amendments made by the Group at its meeting on 8 May 1970, to paragraphs 1-11. The balance of the draft report is largely unchanged as compared to Spec(70)48 apart from an amendment proposed by one delegation in paragraph 45 and Annex I as well as some minor alterations introduced by the secretariat.
which bore particularly on the trade of developing countries should receive the highest priority and that, where feasible, time-tables for their elimination or for the enlargement of quotas should be set, possibly in relation to the growth of the market, without reciprocity being required. It was also suggested that when any quantitative restriction significantly affected both developing and developed countries' exports, special consideration should be given to the product on a most-favoured-nation basis in the light of the interest of the developing countries themselves.

4. The Group noted two basic difficulties. Firstly, there was divergence of view as to the meaning and scope of certain essential concepts in the GATT, in particular the scope of the restrictions covered by Article XI, paragraph 1 and the scope of some of the exceptions to that Article, especially Articles XX and XXI. The Article on the nature and uses of licensing is one example. The place of State-trading is another. A second difficulty arose out of differences in view as to whether particular practices and measures did or did not fall within the applicable definitions. The lack of any forum for determining whether an exception would in fact apply was also noted along with the fact that the terms "legal" and "illegal" have been used variously to distinguish sometimes between measures which do or do not fall within substantive provisions of GATT on use of restrictions and on some occasions to distinguish what measures are subject to legal cover permitting deviation from GATT's rules.

5. On the general mandate of the Group, one delegation urged prompt and positive action to eliminate all import restrictions applied contrary to the GATT. These restrictions, in its view, nullified or impaired the value of concessions that in some cases had been negotiated more than twenty years ago. In most cases, the original conditions justifying these restrictions no longer applied. Their continuance undermined the legal basis of the General Agreement. Furthermore, in the view of this delegation, these restrictions made it extremely difficult to resist protectionist pressures since pressure groups could cite existing violations of GATT. This delegation made the following proposal:

(1) The prompt elimination of all illegal trade measures.

(2) Where the prompt removal of illegal measures is not possible, the gradual relaxation of these measures according to a schedule so that they are completely eliminated by 1 January 1972.
(3) Countries maintaining illegal restrictions after 1 January 1972 would be required to:

(a) seek waivers of their GATT obligations, or

(b) pay appropriate compensation.

(4) Countries obtaining waivers would nevertheless be subject, as is customary, to the provisions of Article XXIII.

This proposal received the support of some delegations.

6. Some delegations noted that this proposal was substantially the same as that made earlier by New Zealand. The debate on the earlier proposal had shown that for a variety of reasons a proposal to remove illegal restrictions as a priority matter was somewhat unrealistic and even inequitable. Whether a restriction was or was not "legal" in GATT terms was to some extent merely a historical accident. Furthermore, if that approach was adopted it was beyond doubt that the contracting parties would exercise much ingenuity to produce legal justifications for more and more of the restrictions in force, with resulting impairment of the force of GATT's provisions and increasing uncertainty as to which restrictions would be included in such a proposal. There would also be a tendency to shift to restrictions of other kinds, including export restraints and unbinding of tariff rates, which might be at least as harmful to trade. Several delegations also pointed to the large number of discriminatory export restraints which they regarded as disguised import restrictions at least as illegal as any others and wished to know whether such restrictions would be included in the scope of the proposal.
7. These delegations expressed a preference for a more overall approach towards liberalization which would cover all quantitative restrictions both legal and illegal and, in particular, those covered by waivers or by particular provisions of accession protocols, such as the provisional application clause, or by invocation of Article XXXV or by similar circumstances. Some delegations expressed the view that such a broad approach should envisage progressive relaxation and gradual elimination of all these restrictions, to proceed as circumstances permitted, in the framework of the general programme of work of the CONTRACTING PARTIES. In this connexion it was recalled that proposals for notification and periodic consultations for all restrictions had been made in the Joint Working Group and that they would be examined by the Council.

**Quantitative restrictions including embargoes**

8. In considering possible solutions which might appropriately be adopted to relax and remove quantitative restrictions and to remove embargoes, the Group's debate focussed on the search for an overall solution in which countries would take action on the restrictions which they presently maintain. The proposal regarding illegal restrictions reported in paragraph 5, as amended and changed by the suggestions of various delegations, represented the basis for one possibility and these proposals are set out in paragraph 9 below, which reflects a synthesis of the various comments on the proposal in paragraph 5. It was noted in this connexion that no delegation took a position in favour of this proposal as a whole. Another approach to a general solution is set out in paragraph 10, and various special aspects to be taken into account in any overall solution are contained in points (1) to (6) of paragraph 11 including some suggestions for supplemental action on particular sectors. The solutions discussed are, to some extent, not mutually exclusive.

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1. One developing country whose trade is adversely affected by an illegal embargo imposed by a developed contracting party expressed a reservation on the ground that the Working Group had not sufficiently dealt with the question of embargoes.
Possible overall solutions

9. One possibility for removal of non-tariff barriers appeared to be a programme in which all developed countries not invoking Article XII would undertake to phase out their import restrictions on industrial products on the following lines:

(1) A maximum number of restrictions of trade significance, in particular those of special concern to developing countries, to be eliminated by some target date, e.g., 1 January 1972.

(2) Adoption of a programme of increases in quotas to be effected beginning immediately and extending possibly one or two years beyond the target time for elimination of the first group of restrictions. These increases might be stated in percentages keyed either to domestic production of the goods restricted or to amounts of the restricted products imported in past years, or might be tied to development of the internal market of the product.

(3) For embargoed products, the programme would include at least token quantities of imports of all restricted products to be increased up to a date of final liberalization.

(4) Any restrictions not susceptible to treatment in one of the ways indicated above would be examined to determine whether they were agreed to be consistent with one of the substantive provisions of GATT authorizing maintenance of quantitative restrictions (e.g., Articles XII, XIX, XX, XXI and not merely covered by provisions or arrangements which currently give legal cover for measures going beyond a strict interpretation of the substantive provision, as, for example existing waivers, protocols of provisional application, accession protocols, Article XXXV and the like). For any restriction not dealt with in (1) to (3) above and not found to be consistent with a substantive provision authorizing its maintenance, the maintaining country would be obliged to seek a waiver as from the end of 1971, and failing success in that effort would pay appropriate compensation. A country obtaining a waiver would nevertheless be subject to the provisions of Article XXIII.
(5) The programme would deal, inter alia, with licensing, quantitative restrictions, export restraints and would extend to all measures, whether "legal" or "illegal" however those terms might be defined.

(6) While implementing the programme, new restrictions should not be introduced.

10. Some delegations favoured another general approach as already outlined in paragraph 6 and covering legal and illegal quantitative restrictions alike, whether applied by direct or by indirect methods such as self-restraint. These delegations felt that this would be a more realistic approach and that it had the merit of not excluding a large number of restrictions that would not fall within the scope of other proposals. Individual developed countries would contribute proportionately with the scope of their quantitative restrictions of all kinds. This solution appeared to them to be more in line with the general programme of the CONTRACTING PARTIES in the field of non-tariff barriers.

Possible partial solutions

11. The following were proposed as supplemental to the proposal in paragraph 9:

(1) Attention was drawn to the proposal concerning developing countries, contained in paragraph 3, previously made in the Joint Working Group.

(2) Developing countries having import restrictions not formally authorized by the CONTRACTING PARTIES but which could be justified under Article XVIII:B were urged to invoke the Article and consult as one contribution to the general effort to remove quantitative restrictions.

(3) Some delegations expressed their serious concern about the discriminatory aspect of the restrictions maintained by some countries, and urged that such features which are inconsistent with the most-favoured-nation provisions of the General Agreement be eliminated as soon as possible.

(4) Some countries suggested that it would contribute to liberalization to draw up a note interpreting Article XXIV in the sense that the Article did not authorize discrimination by any member country member of a regional grouping in the operation of quantitative restrictions to favour other members of a free-trade area or customs union.
(5) It was suggested that in order to avoid abuse, recourse to Articles XX and XXI should be strictly confined to cases which were clearly and demonstrably consistent with the limited purposes set out in these Articles.

(6) Some delegations pointed out that a considerable reduction of the trade restrictive effects of quantitative restrictions could be obtained if a more objective basis for establishment of quotas were used instead of the practice of allocating quotas on the basis of trade during one preceding year for goods where exports are fluctuating.

12. There was discussion of the possibility of identifying commodity sectors in which a number of countries maintain import restrictions, on the theory that one country might find it easier to relax restrictions in a sensitive sector if the action were taken concurrently with similar action in several other import markets, since the pressure of increased imports would be spread in this way rather than concentrated on a single country. There was some feeling that there might be relatively few sectors to which such a procedure would be applicable, but a number of countries felt that the idea might be examined further when the results of the Joint Working Group's review became available. In this connexion it was stated by some developing countries that such action should include products of particular export interest to them. The view was expressed that in order to avoid undue delay in the process of identification of these commodity sectors, the setting up of a target date was essential. One suggestion was that more than one commodity might be linked in such action, so that a country which stood to gain by a group relaxation in one sector might match the action by relaxing restrictions with respect to other products of which it was a potential importer, for example. It was further noted that tariff action might comprise a concomitant which some countries could add to any packages attempting to deal with particular commodities, since some countries still had substantial tariff protection which could well be reduced.
Discriminatory bilateral agreements

13. Some countries maintained that discriminatory bilateral agreements were against the spirit and the letter of the General Agreement and that GATT had no provisions permitting discriminatory agreements except in very special cases for countries in balance-of-payments difficulties. They proposed, as a first step, that all bilateral agreements of a discriminatory nature, whether based on a clearing arrangement or providing for settlement in convertible currency, should be notified by 1 July 1970. Since the General Agreement had no provisions dealing with discriminatory bilateral agreements an interpretative note or declaration should be drawn up prohibiting bilateral agreements where they have a restrictive or discriminatory effect on trade. They further proposed that all discriminatory bilateral agreements should be eliminated over a period of three years and in the meantime no such agreement should be renewed. Any contracting party maintaining bilateral agreements should consult with the CONTRACTING PARTIES as those operating under Article XII or XVIII:B consult at present in the Balance-of-Payments Committee.

14. Some countries stated that the proposal for elimination and surveillance of bilateral agreements should only be applied to developed countries. They claimed that in the case of developing countries bilateral agreements were a means to maximize trade. These agreements had provided a basis for trading with centrally-planned economies and countries having similar trading system, had stimulated export efforts and led to diversification of exports of the developing countries concerned. It was therefore impractical to consider elimination of these bilateral agreements. These countries asked the notifying countries to take these facts into account. Other countries pointed out that, while bilateral agreements may bring short-term benefits to the parties concerned, they usually result in a misallocation of resources and a distortion of trade to the disadvantage of all contracting parties.

15. The question of bilateral agreements with State-trading countries was discussed. On the part of the notifying countries, it was claimed that bilateral trade agreements with countries with centrally-planned economies were entered
into mainly in order to get a more favourable trading position than that of other countries. They should, consequently, be terminated at an early date. A member of the Group representing a centrally-planned economy described the different types of trading relationships of his country. Bilateral agreements between centrally-planned countries and developing countries had proved to be beneficial to both parties and should continue to exist. Bilateral agreements with developed countries should, in his view, be eliminated. In his opinion these bilateral agreements could be abolished if most-favoured-nation treatment were granted completely to his country which was a full contracting party to GATT. Other countries pointed out that the maintenance of discriminatory bilateral agreements was not motivated by the desire to increase one's bargaining position.

16. The same arguments mentioned in the case of quantitative restrictions were valid for quotas allocated under bilateral trade agreements mainly the protection of sensitive sectors of production, market disruption, social reasons, etc. Bilateral agreements should thus be dealt with in conjunction with quantitative restrictions.

17. Some countries pointed out that, while quantitative restrictions can, indeed, within a system of clearing arrangements, be used, in a way, as an instrument for negotiation, such a possibility no longer exists within a system of multilateral payments where the sole purpose of restrictions is to afford protection.

18. Another member of the Group stated that it would be inappropriate to pursue further the discussion in relation to bilateral agreements of this kind pending the outcome of work in other GATT bodies; and in view of the notifications on such agreements already being provided it would be necessary to avoid duplication arising from the first proposal in paragraph .

Export restraints

19. It was agreed to change the title to "Export Restraints" since notifications concern cases where the notifying countries restrained their exports because of the threat of imposition of unilateral restrictive measures by importing countries.
20. Some countries considered that export restraints were of the same character and had the same effect as quantitative import restrictions.

21. Countries against which notifications were made stated that export restraints in many cases were more favourable to exporting countries than alternative trade restrictive measures which would otherwise be applied. They pointed out that levels of restrictions were known in contrast to import quotas which were not always published and that they frequently were higher than were unilaterally imposed quotas. They had reason to believe that export restraints were less disadvantageous particularly because they were the results of consultations and negotiations with the exporting countries. In some cases, the exporting countries had imposed export restraints of their own accord in order to maintain quality control or to regulate competition between their exporters.

22. In reply to the point regarding consultations, countries operating export restraints maintained that the so-called consultations were not carried out on a mutually advantageous basis.

23. Some countries operating export restraints considered that, particularly since such restraints were applied on a discriminatory basis, there might in certain cases be more harmful aspects than if quantitative restrictions were to be applied on a global basis. There were also cases where residual quantitative restrictions were replaced by export restraints. It was proposed that the same rules for relaxation of quantitative import restrictions which had been suggested should apply to the elimination of export restraints.

24. No other specific proposal for solutions was made, as some delegations including the notifying countries, considered that the best way to solve the problems was to treat export restraints in the same manner as quantitative import restrictions. In this context, some countries proposed that the CONTRACTING PARTIES should work out a notification and consultation procedure in order to secure proper surveillance under GATT; reference was made to the relevant suggestions made in the Joint Working Group.
Motion-picture restrictions

25. The notifying countries pointed out that a variety of measures were used to limit trade in motion pictures. They were concerned that any of these measures can be substituted one for the other to restrict trade and proposed a standstill with regard to all of them.

26. These countries regarded certain restrictions as inconsistent with the General Agreement, namely quantitative restrictions on the internal distribution of films, discriminatory taxes, local printing, sub-titling and dubbing requirements, and export subsidies.

27. Although motion-picture screen-time quotas are permitted under Article IV, a standstill should be agreed and ultimately screen quotas should be eliminated. They also noted that Article IV envisaged negotiations in this field.

28. They proposed that all illegal restrictions be removed promptly or, if this was not possible, by 1 January 1972. Countries maintaining illegal restrictions after that date should be required to seek waivers of their GATT obligations or pay appropriate compensation.

29. One delegation pointed out that the practice of setting screen-time quotas for recorded television programmes contravened Article III which, inter alia, prohibits the use of "mixing regulations". Other delegations expressed the view that Article IV, in their interpretation, was also applicable to television quotas.

30. One notifying country expressed the view that subsidies tended to distort trade in films. A solution was envisaged along the lines of that proposed in Working Group 1 for domestic aids:

(a) All contracting parties should notify their subsidies by 1 July 1970 in the form prescribed in the Annex to the report by the Panel of 1960.
(b) On request, notifications should be followed by consultations among interested parties or with the contracting parties in accordance with Article XXII or, if no satisfactory solution were found, as provided for in Article XXIII.

31. Moreover, it was suggested that criteria along the following lines should be developed to ensure that film subsidies have no trade-distorting effects.

(a) No subsidies could be paid which would result in production of an entertainment film which would not otherwise have been made.

(b) Any government aids should be limited to those designed to raise the competence of film makers and increase the quality of films.

(c) Governments should not subsidize exports.

(d) There should be no discrimination in internal tax treatment in favour of domestic or of certain foreign films.

(e) Any subsidies paid should be extended to foreign producers and other film interests.

(f) Production subsidies should not be paid that cause the transfer of film production from one country to another.

32. Some delegations considered that proposals on this subject were of a technical nature and should be considered by governments before they would be in a position to give even a provisional answer.

33. One delegation, while agreeing with the principle of freedom of trade in films, said that a case could be made for a subsidization of the film industry in developing countries, at least during a transitional period.

Minimum price regulations

34. The Illustrative List included the problem of minimum prices as a condition to importation, with special reference to a system maintained by one contracting party to control imports of certain textile products from three contracting parties. One notifying country withdrew on the information that the system did
not apply to its trade. One affected country presented the case for this notification briefly, emphasizing that the practice of excluding goods priced below levels fixed in relation to prices in the importing country was unacceptable if only because of its discriminatory character.

35. Further, the same country claimed that the system of minimum prices was inconsistent with the provisions of the General Agreement and urged the abolition of the system at the earliest opportunity. The representative of the maintaining country explained that this was a measure chosen amongst several because it was the least detrimental to trade. The system was to be reconsidered and if necessary the government of his country would establish direct contact with the notifying government.

36. Another delegation supported by a group of countries, referred to a somewhat similar system applied by another contracting party to textiles and certain other goods. This so-called abnormal pricing practice had been considered in Group 2 but because it resembled a quantitative restriction had been transferred to Group 4. Imports from a particular country can be suspended pending investigation and during the interval other higher-priced goods are free to enter. This appeared to the notifying country to be a quantitative restriction not justified under GATT as it was not a regulation operated in conformity with provisions concerning anti-dumping. The representative of the maintaining country stated that a change in regulations to bring his country's law into conformity with the Anti-Dumping Code was under consideration and that meantime no use was being made of the measure in question. He hoped to supply a text of the new decree as soon as possible. It was agreed that this problem might be reverted to in Group 2 but would be retained in Group 4 for the time being.

Licensing

37. Turning to the first problem on the Illustrative List, the Group recalled the debate on licensing recently held in the Joint Working Group on Import Restrictions and the earlier debate in the Industrial Committee recorded in the General Note to Part 4. An effort was then made to define more precisely the positions of different countries on the nature of licensing and to categorize different types of licensing which had been identified, in order to clarify the possibilities of removal of licensing systems.
38. One preliminary question was also discussed, namely the possible desirability of recommending that the CONTRACTING PARTIES arrange for elaboration of a code setting out certain standards to which licensing procedures, and possibly other import procedures, should conform. A code developed in the OECD in 1966, to which reference was made in the debate on the nature of licensing (see paragraph 40 below) suggested this possibility. In its paragraphs 7 to 14 the OECD code set standards on publication of notices of licensing possibilities, methods of fixing amounts to be licensed, time-limits for applications, validity of licences, rights of appeal and the like. Several countries noted that administrative arrangements for allocation of licences and other aspects of the administration of import procedures offered an area in which an important contribution could be made to reduction of the trade restrictive effect of such measures. They noted that several notifications in the Inventory had been directed to uncertainties, delays and unfavourable competitive conditions which often resulted from avoidable practices in the administration of licensing procedures. Such a code would therefore be entirely relevant in their view to the task of this Group. Some delegations reserved their positions in the matter until their governments should have an opportunity to study the OECD code. It was also noted that the code covered certain other matters which might have relevance for work in progress on non-tariff barriers in other groups, especially Group 2 (see paragraphs 4 and 5 of the OECD code).

39. A suggestion concerning administrative procedures for import licensing requirements not justified by reference to a particular provision of GATT was also submitted by one delegation, as possibly needed to cover existing measures which might be tolerated, subject to appropriate safeguards. This delegation proposed that an import licensing requirement not justified by reference to a particular provision of GATT should provide that:

(1) the arrangements for the receipt of applications should be published;

(2) applications should be accepted from and licences granted to all applicants without discrimination;
(3) licences should be granted upon presentation of the application by the importer;

(4) no conditions should be attached to the issue of licences.

Nature of licensing

40. The OECD code had been introduced into the debate by a contracting party which is a member of both organizations in support of its view that licensing, except when needed to implement restrictions authorized by the provisions of GATT, was a form of import restriction and should be eliminated. Paragraph 6 of the OECD code provided that goods not subject to quantitative restriction should not be subject to any licensing procedure. It further provided that in special cases, where there was need to carry out certain controls which could not be effected in a more appropriate way, a system of automatic licences might be applied, where licences were issued within a maximum of five days from deposit of the request. To those supporting the view that licensing was a form of restriction, the force of these provisions was to assimilate licensing in general to restriction and to permit it only for special cases, which might be roughly the equivalent of various exceptions in GATT. Some other delegations considered that the code confirmed their view that automatic licensing was a legitimate formality permitting the attainment of various special objectives and did not in itself constitute a restriction.

41. The requirement of licensing, some delegations noted, was a formality no different in kind from other formalities which were in force in all GATT countries and which were generally admitted in GATT not to be restrictions. In this view, licensing could only come within the meaning of Article XI, paragraph 1, if it were shown that the effect was to restrict imports. That licensing as such was not intended to be forbidden was indicated by language in Article VIII recognizing the need to minimize the incidence and complexity of import formalities and to decrease and simplify import documentation requirements. Other delegations
considered that any system of import licensing constituted a barrier, either potentially or in fact, and emphasized their view that the cost, delay and uncertainty to traders which was involved in any licensing system operated as a deterrent to trade, 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. They pointed out that these uncertainties reflected actual experiences of traders who had found that licensing had been used to restrict imports, even under so-called automatic licensing systems. In their view such measures should be abolished except where necessary to implement restrictions consistent with GATT.

42. During the discussions the Group identified various types of licensing systems, which might be categorized as: (1) those intended to implement quantitative restrictions (and these might or might not be operated consistently with GATT provisions); (2) those arrangements claimed to be fully automatic and/or with no restrictive effects; (3) others.

43. The first category was not extensively discussed, although it was pointed out that countries having balance-of-payments difficulties were entitled to use import licensing systems when quotas were not practicable and under conditions specified in the Agreement.

44. As concerned automatic licensing systems, some countries claimed that such procedures were needed for example to obtain very expeditiously needed statistical data not otherwise available or to facilitate collection of taxes or levies but stated that licences were granted without delay, sometimes in circumstances giving the government no discretion to refuse licences. They considered that such licensing requirements did not constitute a restriction or barrier. Countries which regarded licensing per se as a barrier to trade could not accept that such measures were necessary or desirable and considered that other methods not harmful to trade could be found to accomplish such objectives. In their view customs data, including invoice values, offered a more reliable basis for gathering statistics since traders tended 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 licensing could not be justified on statistical grounds.
45. Some delegations made a suggestion for improvement in procedures for administration of licensing for goods subject to bilateral and global quotas. In their view, wherever such quotas were fixed their administration should be carried out in a manner which would facilitate importation from exporting countries concerned and would assist them in utilizing fully the quotas allotted. Further details of this proposal appear in the Annex.

46. In certain other cases the licensing formality was intended to serve other special purposes, e.g. to enforce security, health or safety measures, to ensure that trade remained in the hands of qualified traders, to avoid speculation, to watch over the character of trade with non-contracting parties or as a transitional phase while moving from a former régime of quantitative restriction to a coming complete liberalization. It was noted that some of these cases, notably bona fide security, health and safety measures, would fall within provisions of GATT permitting restrictions that were not discriminatory and did not constitute disguised restrictions on trade. Licensing might also be used to facilitate surveillance of prices or volume of trade, but even in this case the countries maintaining such systems contended that the formality per se did not constitute a restriction. On the contrary, its use contributed to avoidance of the imposition of restrictions, permitting the authorities concerned successfully to oppose unfounded claims for protection by placing them in a position to show that restrictions would not be justified.

47. In the view of other delegations, licensing requirements for this last category of purposes in some cases involved undue time delays and administrative red tape and they considered that licensing might in such cases be regarded as an obstacle to trade. Developing countries pointed out that licensing was often applied to products supplied mainly by developing countries while similar or competing products from developed countries were exempted.

48. The countries which regarded licensing per se as a barrier to trade saw in the description of motives for this third category of licensing, which had already been discussed at length in the full committee, a confirmation of their belief that licensing was in such cases a form of import restriction. Moreover, 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. These countries proposed that licensing requirements be eliminated by 1 January 1972 except where required to implement import restrictions consistent with the GATT.

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

(1) Most countries agreed that a licensing requirement in itself could not be said in all cases to constitute a barrier to trade but considered that in certain cases it operated as a barrier and thus constituted an import restriction. Some delegations took the view that all licensing except such as may be required to implement restrictions consistent with the provisions of the Agreement would normally constitute a barrier to trade.

(2) Most countries agreed that a fully automatic licensing system, where the competent authorities had no discretion to refuse a licence and where licences were granted within a maximum limit of five days from the date of application, was not harmful to traders and was consistent with the principles and provisions of the General Agreement. Some delegations disagreed for the reasons stated above. Removal of such a system could be of value to trade partners and traders which, for various reasons, regarded licensing as such or the possible threat of restriction as a barrier to trade.

(3) There was general agreement that some instances of licensing involved restriction of imports, usually in breach of Article XI, paragraph 1, as regards countries having no balance-of-payments difficulties. The restrictive effect was particularly frequent where the object was to implement bilateral agreements or otherwise to control imports from particular country sources, to maintain surveillance over the level of internal prices or the volume of imports.
(4) There was general agreement that in many instances other than those where the acknowledged purpose of licensing was restrictive, licensing in practice involved delays, uncertainties and elements of discrimination which hampered the flow of trade.

(5) The instances identified as falling in (3) and (4) above constituted restrictions which should be included in any general programme for removal of import restrictions.

(6) Some delegations suggested that an acceptable programme for action in this area should envisage removal by fixed target dates of all licensing systems identified as constituting import restrictions inconsistent with the substantive provisions of the General Agreement.
Licensing procedures should provide for the following:

1. **Bilateral quotas**

   (a) Imports under bilateral quotas should be allotted without import licences, on the basis of export permits to be issued by the exporting countries.

   (b) In exceptional cases where issue of import licences was considered necessary by the importing countries, these should be issued automatically on production of export permits.

2. **Global quotas**

   (a) Quotas should not be fragmented in small quantities and allotted to a number of parties, as this makes imports uneconomical.

   (b) The practice of allotting import licences for certain goods only to domestic producers of like goods should be discontinued and licences should be issued to all persons interested in importing.

   (c) The practice of issuing licences on condition that goods should be exported and not sold in domestic market should be discontinued.

   (d) The period of validity of the licences should not be short and should be fixed in the case of countries situated at a distance, taking into account distances of transport and difficulties of communication.

   (e) Notices for allocation of quotas should be given due publicity in official and private press organs and brought to the attention of the trade associations as well as of the governments of exporting countries, particularly of their trade representatives.

   (f) Trade representatives or export promotion bodies of the exporting countries should be kept informed about licences issued and the names of the importers to whom licences were issued.