GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Committee on Import Licensing

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COMMUNICATION FROM THE UNITED STATES

The delegation of the United States has asked the Secretariat to circulate the attached document, which was recently submitted to the Uruguay Round Negotiating Group on MTN Agreements and Arrangements as MTN.GNG/NG8/W/7, to the Committee for discussion.

SUGGESTED IMPROVEMENTS IN THE AGREEMENT ON IMPORT LICENSING PROCEDURES

Introduction

The Agreement on Import Licensing Procedures ("Agreement") negotiated in the Tokyo Round has served to provide transparency and procedural guidelines for import licensing practices and procedures. Essentially it ensures that licensing procedures themselves do not constitute an obstacle to international trade. However, the Agreement does not place any specific limits on the imposition or use of licensing. It relies on the existence of GATT Articles VIII and XIII to serve this purpose. Unfortunately, existing GATT discipline on licensing practices contained in GATT Articles VIII and XIII and the Agreement has been insufficient to curb the use of licenses in the trading system and the distortions which result from their use.

The Licensing Agreement has been helpful in guiding governments toward more transparent and less restrictive licensing procedures for both automatic and non-automatic licensing. While this clearly was an area which needed to be addressed, it is not the primary problem in the trading system resulting from licensing. It represents only a partial solution to the problems created by licensing.

Deficiencies in the Existing Agreement

Since implementation of the Licensing Agreement in 1980, the Committee on Import Licensing has undertaken three biennial reviews of the operation, adequacy and effectiveness of the Agreement. (A fourth review is nearing completion.) On each occasion the Committee has found that the Agreement has contributed to increased transparency in the licensing procedures and practices of the Signatories and has helped to ensure fair and equitable application and administration of those procedures.

The United States considers that the Agreement has been useful, but believes that it is too limited in scope to address the most significant problems being experienced. In contrast to other Agreements negotiated in the Tokyo Round, the Licensing Code is primarily a "reporting" code, rather than an "operational" Code.

Deficiencies in the Licensing Agreement became obvious very soon after the Agreement was signed as countries began to implement. Difficulties resulted from lack of clarity of the language which allowed for significant variation in interpretations of commitments made in the Agreement. Over the last three years, the Licensing Committee has focused work on developing recommended interpretations

of several provisions formulated by the Agreement's drafters in vague terms. In May 1987, the first phase of this work program was completed and resulted in recommendations on the interpretation of acceptable practices and timeframes within which certain requirements relating to publication, public notice and application procedures should be accomplished. These recommendations clearly were needed to provide clarity and uniformity in the implementation of the Agreement.

Other elements of the existing Agreement also need clarification. One proposal that has been made is to seek clarification of Article 1.1 of the Agreement, which addresses the essential question of what constitutes a license under the Agreement. The current proposal to review Article 1.1 directly confronts the issue of discipline on procedures versus the legitimacy of licensing practices. Another proposal would review the need for parallel procedures for both automatic and non-automatic licenses as a means of further reducing the administrative burden faced by exporters. In addition, it is clear that further work also could be done to clarify other general terms used in the Agreement, e.g., "as far in advance as possible", and "opening and closing dates".

A New Licensing Agreement

The question of additional discipline on licensing has not been addressed specifically in either the Uruguay Round or the GATT contexts to date. However, in the view of the United States, significant improvements could be made in this area. This would require a substantial renegotiation of the existing Agreement to blend several elements:

(1) the general transparency, notification and procedural provisions of the current Agreement;

(2) the results of further clarification of terminology used in the current Agreement; and

(3) new substantive discipline on the use of licenses, particularly non-automatic licenses.

Possible Ways to Improve Discipline

There are many ways that substantive discipline could be developed. The United States has identified a number of areas which could be explored to achieve this goal.

1. The Code should contain some sanctions against unlimited use of licenses and provide substantive guidelines for circumstances under which licenses may legitimately be used. For example, it may be useful to develop:

   -- Criteria for determining when import licenses should be issued and general guidelines on what products may be subject to licensing;

   -- Discipline or guidelines on the duration of licenses;

   -- Limits on the amount of trade that can be covered by licenses at any given time;

   -- Procedures for reviewing the extent and nature of licensing regimes.

   All of these actions could serve to mandate or encourage a reduction in the use of licensing.

2. The United States believes that discretionary licensing represents a particularly difficult form of licensing barrier for exporters. Discretionary licensing systems rarely provide adequate transparency, they result in significant uncertainty in the marketplace and they are highly distortive. Some additional discipline should be considered to encourage countries to move away from discretionary licensing wherever possible or to place some guidelines on their use, at a minimum.

3. Elaboration of discipline on discretionary licensing will require a review of the relationship between quantitative restrictions, safeguard actions and licensing. In a practical sense this relationship is relatively obvious. However, it is not well-understood in the context of the GATT or the Agreement on Import Licensing Procedures. Other work being undertaken in the Uruguay Round, for example, in the Negotiating Groups as Safeguards and Non-Tariff Measures also may affect this relationship further and should be taken into account in work by the Negotiating Group on MTN Agreements and Arrangements and the GATT Licensing Committee as the Uruguay Round evolves.