

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MDF/16

17 July 1985

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SAFEGUARDS

Statement by the Chairman of the Council at its Meeting on 17 July 1985

1. The Ministers agreed at the November 1982 Session of the CONTRACTING PARTIES that the responsibility for drawing-up a comprehensive understanding on safeguards should rest with the Council (L/5424, page 5). The Council has agreed that its Chairman should hold informal consultations in order to explore how best progress could be achieved on this difficult issue and keep it informed on a regular basis (C/M/174, page 2). At their fortieth Session last November the CONTRACTING PARTIES agreed to the recommendation of the Chairman of the Council that the work directed towards a comprehensive understanding be continued, taking his report into account, and brought to a close as rapidly as possible (MDF/4 and L/5751/Rev.1).
2. The informal discussions continued during the first part of this year, taking into account, inter alia, informal papers distributed by some participants and the suggestion that the "building blocks" approach of seeking agreement on individual elements on a comprehensive arrangement on safeguards which will be progressively enlarged might provide the best basis for making progress. The following were among the main points made in the discussions this year and give an indication of the situation reflected in these discussions.
3. The participants in the informal consultations recalled the commitment of their governments to the principles of the General Agreement.
4. The participants recognized in principle that safeguard actions were emergency actions and should only be taken if the criteria laid down in Article XIX were met. It was furthermore emphasized that a clear distinction should be made between emergency actions and actions against unfair trade practices.
5. As concerns serious injury, a suggestion was made that a sudden unforeseen rise in imports entailing effectively verified injury must have occurred and that this increase in imports must be the major cause of injury. It was also suggested that the concept of "threat of injury" should be done away with because it does not normally reflect an emergency situation. Some participants could not accept these suggestions, while others felt that these suggestions needed careful consideration.
6. The participants were of the view that safeguard measures were emergency actions which should be temporary by definition and progressively liberalized. A suggestion was made that duration of safeguard measures should be short without, in principle, any extension. Another suggestion was that duration of a safeguard measure might be made dependent on the specific circumstances of each case.

7. The participants were of the view that contracting parties should retain the rights given to them under Article XIX:3(a). One suggestion was that consideration should be given to the possibility of waiving these rights in return for stricter disciplines, in particular as concerns verification of serious injury and of a causal link between an unforeseen rise in imports and injury.

8. For a great number of participants, commitment to the m.f.n. principle was non-negotiable. Other participants, while supporting the m.f.n. principle as a general rule, said that realities had to be taken into account, in particular the fact that a considerable number of divergences from that principle existed. In their view, in certain clearly defined situations, the application of safeguards on non-m.f.n. basis should be possible.

9. The participants held differing views on the problem of so-called "grey-area" measures. A large number of participants were of the opinion that legality must not be conferred upon such measures, that they should be phased out over a certain period of time and that no new measures should be introduced. Other participants considered that a workable solution on safeguards would also reduce the importance of this problem without need for formally outlawing such measures.

10. Some participants recognized that there was a link between safeguards and structural adjustment, and that safeguard measures are intended to give industries in a particular sector an appropriate period of time to adjust to changes in competitive circumstances. Other participants were of the view that there is no such link between structural adjustment - a long term process - and safeguard measures - actions taken in an emergency. Many participants were of the view that safeguard measures could not be used as substitutes for structural adjustment.

11. Some participants were of the view that, in the application of safeguard measures, provision should be made for certain well-defined and limited exceptions for developing countries. In their opinion, this could be done without departing from the m.f.n. principle and would permit increasing participation of developing countries in trade liberalization. Other participants were doubtful about introducing such exceptions and said that exceptions should be discussed only when the rules themselves had been clarified.

12. The participants were of the view that a solution on safeguards would have to apply to all contracting parties. Some participants suggested that this could best be achieved by a formal amendment of the General Agreement. Other participants considered it preferable to concentrate first on finding a solution to the substantive problems in the safeguards area before entering into a discussion on the legal form that such a solution might take.

13. Some participants suggested that provision should be made for the direct applicability of GATT rules by national courts since this would strengthen the implementation of the rules and make it easier for governments to resist protectionist pressures. Other participants considered that this idea was not very realistic in the context of the GATT because it would limit national sovereignty and in most countries domestic laws had priority over international law.

14. Some participants felt that provision should be made for a formal discussion of safeguards by all contracting parties, e.g. at a meeting of the Safeguards Committee, without prejudice to keeping open the possibility of pursuing informal consultations on the issue.

15. I cannot conclude this report without attempting a more general assessment of the present situation. As can be seen from the report of the discussions which I just made, and also from the report of the Chairman of the Council last November, there is a convergence of views on some of the elements contained in the Ministerial Decision. Certain participants, however, indicated last year that they would not be prepared to implement any partial agreements in the absence of a Comprehensive Understanding and their position on this point remains unchanged. The main obstacle to a comprehensive understanding continues to be the difference of opinion on the question of geographical coverage, i.e. between those who maintain that safeguard measures should be applied on a non-discriminatory basis and those who maintain that selective action should be permitted. No movement on this issue has taken place in the informal discussions held this year and largely because of this it has also not been possible to reach any clear understanding providing for the elimination of so-called "grey-area" measures.

16. Finally, I note and welcome the fact that the communications and statements recently presented for circulation to contracting parties by a number of contracting parties all emphasize the need for a satisfactory arrangement on safeguards as a critical element in an effort to strengthen the GATT system. These presentations also contain a number of suggestions on approaches to agreement in this area.