

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Multilateral Trade Negotiations

### SAFEGUARDS HYPOTHESIS

#### PREAMBLE

(Circulated at the Request of Certain Delegations)

Considering that Ministers agreed in the Tokyo Declaration of 14 September 1973, that comprehensive Multilateral Trade Negotiations in the framework of the GATT should include, inter alia, an examination of the adequacy of the multilateral safeguard system, considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results;

Desiring, therefore, to elaborate additional rules and procedures for the application of Article XIX of the General Agreement, in order to provide greater uniformity and certainty in the implementation of its provisions;

Affirming, however, that the rights and obligations of Article XIX retain their full legal validity and authority;

Hereby agree as follows:

#### Article 1 - General Provision

Without prejudice to the rights and obligations of GATT contracting parties regarding restrictive measures permitted for specified purposes under the terms of other GATT provisions, protocols, agreements and arrangements negotiated under GATT auspices, parties to this Agreement undertake not to take safeguard action except through invocation of Article XIX and in accordance with the following provisions.

#### Article 2 - Serious Injury

Safeguard action may only follow a determination that imports of a particular product are causing or threatening to cause serious injury to be defined to a major part of all domestic producers of like or directly competitive products. Such a determination shall be made only when such imports have increased in such quantities (or in such relative quantities) and under such conditions as to account for the principal cause of serious injury sustained or demonstrably likely to be sustained by domestic producers. The determination in all cases shall be made on the basis of positive findings of fact and not on mere conjecture or remote possibility; in the case of a determination of threat of serious injury, those findings shall include evidence that serious injury, although not yet existing, is clearly imminent if import trends continue unabated.

Article 2 bis - Domestic Investigative Procedures

Before a safeguard action may be implemented by a party to this Agreement, a previously designated governmental entity shall, pursuant to established procedures and within a reasonable period of time, examine the proposals for such action and determine that the requirements of Article 2 have been met. (Appropriate procedures including provision for public notice, exchange of information, and exposition of grounds for decision to be defined.)

Article 3 - Notification and Consultation\*

1. The parties to this Agreement shall, in accordance with paragraph 2 of Article XIX, provide written notice /at least \_\_\_\_\_ days/ in advance of any intended measure under this Article giving all relevant particulars and shall be prepared to open consultations with the CONTRACTING PARTIES and those contracting parties that have a substantial interest as exporters of the product concerned /or whose trade interests are likely to be substantially affected/ before the measure is introduced. Consultations shall begin as soon as possible after notification and in any case no later than /thirty days/ from the date of notification. Where undue delay in beginning or completing these consultations would lead to damage in the importing country which would be difficult to repair, the importing party would be permitted to apply the measures notified pending the final outcome of consultations. Where the procedures indicated above are followed, the provisions of Article XIX paragraph 3(a) will apply.
2. In critical circumstances, where immediate action is necessary because any delay would cause damage difficult to repair, measures may be introduced immediately /following notification/ /and shall be notified immediately/. In this case the action taken will be on a provisional basis /with a maximum validity of sixty days/ and the party taking action will be required to open consultations as soon as possible. In this event the provisions of Article XIX paragraph 3(b) will apply.
3. In the event that the consultations provided for in this Article lead to the situation described in Article 6, the provisions of the latter Article will apply.

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\*Note: Consideration should be given to /the inclusion in this Agreement of/ provisions governing the use of automatic licensing and similar surveillance measures for safeguard-related purposes.

#### Article 4 - Nature of Safeguard Action

In general, safeguard measures pursuant to this Agreement shall be applied on a global basis and without discrimination as between sources of imports. In unusual or exceptional circumstances where imports causing serious injury can be clearly distinguished from other imports of a particular product, a safeguard measure may be limited to the injurious imports and, if so, shall be applied in a non-discriminatory manner in respect of those imports.

The appropriate procedure to be defined.

#### Article 5 - Conditions Governing Safeguard Actions

1. A safeguard action shall be limited to imports of the particular product or products causing injury, although appropriate allowance may be made for dealing with the possibility of circumvention through, for example, minor design or processing changes or incomplete assembly of component parts.
2. A safeguard action shall remain in force only so long as it is necessary in order to prevent or remedy serious injury to domestic producers. A safeguard action shall contain a stipulation of its maximum period of validity which shall not exceed 7. A party to this Agreement considering the extension of an action shall notify the CONTRACTING PARTIES ninety days before its scheduled expiration and afford an opportunity to consult with it, regarding the possible extension, before the original action expires.
3. Safeguard measures shall, to the extent feasible, be progressively liberalized during the period of their application to encourage the adjustment of domestic producers to import competition.
4. Safeguard measures shall not normally reduce the level of imports below the level in some representative historical period.
5. No safeguard actions shall be implemented with respect to any product which was subject to a safeguard action within the preceding two years.

#### Article 6 - Response to Safeguard Action

If, following the consultations described in Article 3 a party to this Agreement affected as an exporter of the product concerned to the territory of the party taking the safeguard action agrees that the requirements of this Agreement have been met by the latter party it shall refrain from exercising its rights under Article XIX:3(a) of the General Agreement with respect to the suspension of substantially equivalent concessions or other obligations so long as the party taking the action continues to comply fully with the requirements of this Agreement.

If the affected party does not so agree and exercises those rights, the party taking action may request review of the matter under Article 9(2).

Article 7 - Use of Export Restraints

1. Parties to this Agreement, whether exporters or importers, undertake not to circumvent the responsibilities and obligations resulting for importers from this Agreement and from Article XIX of the General Agreement by means of agreements or understandings of any kind to restrict the exportation of a particular product for the purpose of preventing or remedying serious injury to domestic producers of a like or directly competitive product in the territory of any other party to the General Agreement.
2. A party to this Agreement may by agreement with another party to the Agreement restrict exports of a product to the territory of that other party provided the obligations and procedures of this Agreement which pertain to import restriction are adhered to.
3. Any party which considers that such a restraint agreement or understanding /including those on a non-governmental basis/ has been or may be entered into in respect of a product in which it has a substantial interest may request consultations with the government(s) it considers to be concerned with a view to obtaining clarification as to whether safeguard obligations are being observed. If such consultations do not produce a satisfactory outcome, the matter may be brought to the attention of the Committee on Safeguard Measures in accordance with the provisions of Article 9.

Article 8 - Developing Countries

1. Parties to this Agreement shall, within the terms of its provisions, make particular efforts to refrain from imposing safeguard measures on imports of particular products of special interest to developing countries parties to this Agreement, or, where such measures are imposed, to limit them strictly to the minimum feasible in extent and duration. In particular, measures imposed consistent with the requirements of this Agreement shall normally permit, for any developing countries party to this Agreement which are small suppliers or new entrants to the market of the product with respect to which action is taken, continued market access with moderate growth on terms more favourable than those accorded to other affected parties.
2. Parties to this Agreement which are developed countries /reserve the right to no longer/ /may determine after consultation with the affected developing countries that it is no longer appropriate to/ extend the differentiated and more favourable treatment contemplated in this Article to individual developing country parties to the Agreement, when such countries, or the relevant sectors within those countries, have achieved substantially higher levels of economic development.

Article 9 - International Supervision\*

1. The parties to this Agreement shall request the CONTRACTING PARTIES to establish a Committee on Safeguard Measures composed of representatives of the parties to this Agreement. The Committee shall normally meet once each year for the purpose of affording parties to this Agreement the opportunity of reporting on the application of their safeguard systems, and of consulting on any matters affecting the operation of this Agreement.

2. It will also be open to any party to this Agreement to request the Chairman of the Committee on Safeguard Measures to convene a special meeting of the Committee in order to bring to the attention of parties to the Agreement any problem resulting from action in a particular case which it judges to be in contravention of this Agreement and which it has not been possible to resolve by means of bilateral consultations.

The Committee may take whatever action it considers appropriate with a view to promoting solutions to problems which may be brought to its attention in this way /including the establishment upon request of a panel of experts acting in a non-governmental capacity to review the matter and make such findings as will assist its resolution/.

/3. Consultations under paragraph 1 of this article or action taken in accordance with paragraph 2 shall be without prejudice to Articles XXII and XXIII of the General Agreement./

/3. Nothing in this Agreement shall prejudice the rights of contracting parties under Articles XXII and XXIII of the General Agreement with respect to any matter affecting the operation of the General Agreement; except that, with respect to matters affecting the operation of this Agreement, including possible nullification or impairment of benefits under this Agreement, parties to the Agreement shall resort to the procedures of this Agreement./

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\*It would be for consideration whether there should be a sub-committee of signatories for continuing surveillance and conciliation purposes under this article.

FINAL PROVISIONS\*

(\*To include, inter alia, provisions dealing with existing measures, such as the following:

"All safeguard measures maintained pursuant to Article XIX of the General Agreement by a party to this Agreement on the date of entry into force of the Agreement for it, shall be terminated no more than \_\_\_\_\_ years from that date unless extended under provisions of Article 5(2) above.

"All other safeguard measures maintained by a party to this Agreement shall be notified to the Committee no later than the date of entry into force of the Agreement for that party. Such measures shall be terminated no later than one year following entry into force of this Agreement for that party unless continued maintenance of the measures is in conformity with this Agreement." )