RESTRICTED
MTN/3D/5
5 February 1975
Special Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

GROUP 3(d) - SAFEGUARDS

DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES IN THE FIELD OF SAFEGUARDS

Note by the Secretariat

Introduction

1. At the initial meeting of Group 3(d) in October 1974, it was agreed that in its future activities the Group would carry out, in parallel, the general work and the work on differentiated treatment for developing countries and that the secretariat would study the feasibility of granting differentiated treatment to developing countries in the course of the negotiations.

2. To assist participating countries in their examination of the feasibility of such treatment for developing countries in the field of safeguards, a synthesis of various proposals made and views expressed on this question at meetings of the Committee on Trade and Development, Group 3(d), etc. is provided below. It was also thought that reference to the relevant provisions of Article XXXVII of the General Agreement and some information on th drafting history of this Article, would shed light on the consideration given to related points of interest to developing countries in this area.[1] A brief analysis of Article XIX actions concerning developing countries is provided. Finally, a number of points concerning the feasibility of differential treatment for developing countries in the field of safeguards are raised for consideration.

3. As additional background, the procedures established by the Committee on Trade and Development for reporting and for consultations and conciliation as provided for in Part IV and Article XXIII in connexion with developing country interests are reproduced in Annexes 1 and 2 respectively. Proposals for the provision of special treatment to developing countries in the field of safeguards made by the delegations of Brazil and Nigeria in the Committee on Trade and Development are shown as Annexes 3 and 4 and a draft UNCTAD resolution on this subject is attached as Annex 5. For reference purposes, the relevant provisions of the Arrangement Regarding International Trade in Textiles referred to in this note are reproduced in Annex 6.

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[1] As indicated in paragraph 4 of MTN/3D/1 and in document MTN/3D/3 a number of GATT provisions and procedures are concerned with safeguards. However, this note is concerned mainly with the application of Article XIX and the provisions of Part IV that may be relevant to the use of safeguard measures in relation to products of export interest to developing countries.

Article XXXVII[1]

4. In the light of actions to introduce or increase the incidence of tariffs and non-tariff barriers on products of interest to developing countries, it is relevant to consider the provisions of Article XXXVII and their drafting history. Article XXXVII provides in paragraph 1(b) that developed contracting parties shall, to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible - refrain from introducing, or increasing the incidence of customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties. These provisions, though they were drawn-up in broad terms to cover restrictive actions generally, apply, inter alia, subject to qualifications stated therein, to safeguard actions, notably those provided for under Article XIX. The drafting history of Part IV indicates that the drafters had in mind that paragraph 1(b) would apply in the event that consideration was being given to measures permitted under Article XII, Article XVIII:B, Article XIX, Article XXVIII, or under any other procedures permitted under the General Agreement.[2]

5. Paragraph 2 of Article XXXVII states that whenever it is considered that effect is not being given to the provisions, inter alia, of sub-paragraph (b) of paragraph 1 the matter shall be reported to the CONTRACTING PARTIES, which, if requested to do so by any interested contracting party, shall consult on the matter with the contracting party concerned and all interested contracting parties with a view to reaching satisfactory solutions. In the consultations, reasons

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[1]The Protocol introducing Part IV is now in force amongst all but three contracting parties.

[2]An interpretative note in the draft of Part IV submitted by the Committee on the Legal and Institutional Framework to the CONTRACTING PARTIES at their session in early 1964 (L/2195/Rev.1) read as follows: "Ad paragraph (b). This paragraph would apply in the event that consideration was being given to special measures permitted under Article XII, Article XVIIIB, Article XIX, Article XXIV, Article XXVIII or under any other procedures permitted by this Agreement". With some delegations having a reservation on the inclusion of Article XXIV, this interpretative note was not included in the final text.

for such non-compliance are required to be examined and, among other things, consideration would be given to whether compelling reasons, including legal reasons, existed for the application of the measure. The drafting history indicates that these provisions for consultations were included in the Article in an effort to ensure the effective implementation of Part IV against the background of qualifications made to the commitments contained in Article XXXVII.[1]

6. In this connexion, it may be noted that the Committee on Trade and Development adopted in 1965 reporting procedures in order to give effect to the provisions set out in Part IV and in 1970 procedures for consultations which could be used whenever it was considered that effect was not being given to any of the provisions of sub-paragraphs (a), (b), or (c) of Article XXXVII:1. However, since these consultation procedures have not yet been invoked, it is difficult to see what precise protection they could provide developing countries against the use of restrictive measures including those taken by way of safeguards. The elements contained in the consultation procedures (see Annex 1) include the following: (i) assistance by the secretariat in the preparation of the necessary background documentation and for the facilitation of consultations between the parties concerned (paragraph 1); (ii) review of the matter by the Committee on Trade and Development on the basis of the background documentation (paragraph 2); (iii) arrangements for examination including the establishment of a panel or a working party. Guidelines on the composition, terms of reference, proceedings and

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[1] The Committee on the Legal and Institutional Framework recognized that the phrase "to the fullest extent possible" in paragraph 1 could have the effect of leaving the applicability of the provisions of sub-paragraphs (a), (b) and (c) of paragraph 1 exclusively to the judgement of each contracting party subject to them. Further, some developing contracting parties expressed concern that this phrase might be used in a way that would considerably detract from the effectiveness of the paragraph. For this reason, it was agreed to incorporate in the commitments an interpretation of the phrase and to make provision for consultations (cf. L/2281, paragraph 4).

reports of the panel or the working party (paragraph 3); (iv) report of the Committee to the CONTRACTING PARTIES on the establishment of any panel or working party and on the results of the consultations carried out by it (paragraph 3).[1]

7. In connexion with a suggestion for linking adjustment assistance measures to the question of safeguards, Article XXXVII:3(b) provides that "The developed contracting parties shall give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end." An interpretative note to this paragraph states that the other measures might include steps to promote domestic structural changes.

8. Article XXXVII:3(c) provides that "The developed contracting parties shall have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties." The drafting history indicates that care was taken

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[1]During the drafting stage a question was posed as to measures which could be taken when a developed country did not fulfil commitments even after a decision by the CONTRACTING PARTIES that the reasons advanced by that country for not fulfilling its commitments were insufficient. Paragraph 5 of Article XXXVII refers to consultations under normal procedures of the General Agreement - including notably Article XXIII - to which each contracting party may have recourse with respect to any matter or difficulty which may arise.

The Decision of the CONTRACTING PARTIES of 5 April 1966 (Annex 2) provides for procedures enabling the more speedy and efficient use of the provisions of Article XXIII by developing countries. These procedures contain provisions for reference of the matter by the complaining developing country to the Director-General for his good offices, examination of the matter by a panel of experts with a view to recommending appropriate solutions and time-limits for the consultations by the Director-General (two months), for the submission of findings and recommendations by the panel of experts (sixty days), and for the submission of a report by the contracting party to which the recommendation is directed regarding the action taken (ninety days). In the event that a recommendation to a developed country is not applied within the time-limit (ninety days), the CONTRACTING PARTIES are required to consider what measures should be taken to resolve the matter.

in the drafting to avoid overlapping between the provisions of paragraph 1(b) and paragraph 3(c), to the extent that an escape clause action would fall within paragraph 1(b) and not within paragraph 3(c). It was considered by some delegations involved in the drafting that "other measures" referred to in paragraph 3(c) included anti-dumping and countervailing duties and export assistance measures.

9. There have been no instances where Article XXXVII has been invoked to exempt developing countries from restrictive actions including actions taken under the provisions of Article XIX. However, Article XXXVII has been referred to in discussions in the context of the application of import deposits and surcharges for balance-of-payments reasons. It has been stated by delegations of developing countries that in terms of the provisions of this Article, restrictive action taken by developed countries should not apply to imports from their countries. In certain cases, it was also stated that the action taken was without compelling reasons since imports from developing countries could have been exempted without significant injury to the importing country. In only one instance the developed country (Denmark) imposing a restrictive measure (temporary import surcharge) for balance-of-payments reasons exempted products originating from developing countries (members of the "Group of Seventy-Seven") to the extent that such products were included in the country's GSP scheme. In other instances, it was stated that the trade interests of developing countries were taken into account in the exemptions made on a most-favoured-nation basis, but the exemption of all imports from developing countries was not desirable or feasible since this would reduce the effectiveness of the measures thus delaying the solution of problems and the time when the measures could be relaxed or removed.

Application of Article XIX to developing countries

10. In 1971 and 1972, the Committee on Trade and Development discussed the question of the application of escape clause action to developing countries and exchanged views as to whether it was necessary to re-examine Article XIX in the conditions existing after the introduction of Part IV of the General Agreement (cf. L/3625, paragraphs 19-21 and L/3760, paragraphs 43-46). Some delegations from developing countries were of the view that it could not be considered equitable to apply emergency measures under Article XIX on the same basis to imports of products from countries in different stages of development, and proposed that in the light of Part IV and especially Article XXXVII, imports from developing countries should be exempted from the scope of action under Article XIX.

11. Representatives of several developed countries stressed that Article XIX covered emergency rather than normal action and that it was to be invoked only in cases of serious injury. To require the discriminatory use of this Article and

thus to eliminate part of its escape value nature, might in fact encourage the use of quantitative restrictions and limit the ability of contracting parties to accept commitments for trade liberalization. One of these representatives felt that serious injury requiring emergency measures would be among the "compelling reasons" mentioned in Article XXXVII and thus would place Article XIX situations, outside the scope of paragraph 1(b) of the Article. There could be situations, however, where an importing country might decide, after paying regard to the particular interests of developing countries, not to proceed with any emergency action under this Article.

Article XIX actions

12. An analysis of the application of safeguard provisions in the GATT, notably Article XIX, was provided in secretariat note MTN/3D/1. The following points concerning developing countries supplement this analysis. Notifications by contracting parties of emergency actions show that developed countries have had recourse to such actions in approximately fifty instances, excluding several instances concerning cotton and related textile products. It appears that products exported by developing countries were involved in at least one half of these cases. The information available also indicates that in about one quarter of the cases identified, developing countries were among the suppliers participating in the increase in imports of the products in respect of which action was taken though the import share of these countries was more significant in some products than in others.

13. Approximately one half of the instances involving the export products of developing countries took the form of import restrictions, and for the remaining one half bound tariffs were increased. In the latter case, one developed country chose to increase the incidence of tariffs in the form of a surtax on imports without modifying the relevant duty rates. This country has applied the surcharge only for a short period of time.

14. It may also be noted that in approximately one third of the instances where products exported by developing countries were involved, the emergency measures were terminated within twelve months, while in almost one half of such cases the measures were applied for over five years or are still being applied after five years. In several instances, temporary tariff increases introduced under the provisions of Article XIX have been made permanent as a result of the renegotiation of tariff concessions under Article XXVIII.

15. Invocation of Article XIX by developing countries is recorded in six instances. In one such instance, it is clear on the basis of the notification received that the developing country concerned took temporary emergency action under Article XIX to facilitate the establishment of a new domestic industry.

16. In the light of the above, it would appear that in the context of the drafting history and adoption of Part IV, efforts were made to safeguard the interests of developing countries against the imposition of new barriers to their exports. Subsequent discussion, however, would indicate that the measures adopted in this connexion have not operated in the manner in which the developing contracting parties considered they should have been operated. Some of the argumentation used may have relevance to the question of the use of safeguards in such a manner that imports from developing countries are protected from avoidable injury.

Preparatory work for the trade negotiations

17. As an element in the preparatory work for the trade negotiations during 1973, the Committee on Trade and Development discussed on a preliminary basis questions relating to safeguards in connexion with the interests of developing countries. On the basis of proposals made by Brazil and Nigeria in documents COM.TD/91 and 92 respectively (see Annexes 3 and 4)[1], members of the Committee exchanged views on the possible need for action concerning safeguards in order to establish special provisions and procedures involving differentiated treatment for developing countries (cf. L/3873, paragraphs 6-11). The above two countries with support from delegations representing other developing countries suggested, as a general rule, that safeguards should not be applied to imports from developing countries. Where compelling and exceptional circumstances which could not be corrected in a reasonable period of time through adjustment assistance required the introduction of safeguards, it was proposed that certain criteria and procedures should be observed by developed countries so as to minimize the effects on the trade of developing countries. The elaboration of special provisions to facilitate the application of safeguard measures by developing countries in accordance with their particular needs and interests was also suggested.

Summary of proposals and views expressed

18. The proposals made by delegations from developing countries in the Committee on Trade and Development and Group 3(d) in connexion with the multilateral safeguard system may be set down under a number of headings. Comments and suggestions made in the course of the discussions on these proposals have also been summarized in the following paragraphs.

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[1] Proposals contained in draft UNCTAD resolution TD/B/C.2/L.71 are reproduced in Annex 5.

Criteria for use of safeguard measures and burden of proof

19. While it was suggested, as a general rule, that developing countries be exempted from safeguard action by developed countries, it was proposed that the conditions and criteria for the application of safeguard measures against imports from developing countries in specific situations should be tightened substantially. Where compelling and exceptional circumstances required the introduction of safeguards, certain criteria and procedures as stated below should be observed by developed countries so as to minimize the effects on the trade of developing countries: (i) a sudden influx of imports from developing countries themselves should be the major cause of serious injury to producers of like products in the importing country; (ii) such an increase in imports and serious injury should be substantiated and not merely considered likely by the importing country[1]; (iii) the application of the measure should not cause serious injury to developing countries, a criterion which should be assessed both in terms of present and potential levels of production and employment and in terms of the present and potential importance of the product in question for the overall exports of the developing countries concerned as well as the importance of the market of the particular developed country for the exports of the product by developing countries.[2]

Mode of action

20. Delegations from developing countries have suggested that developing countries be exempted from the application of safeguard measures when the market disruption was caused by the exports of a developed country or countries. It was also proposed that imports of a product from those developing countries who are new entrants in the markets of the developed countries should, in any case, be excluded from the application of safeguard measures[3] and that the special circumstances and requirements of the least developed among developing countries should be duly taken into account. These delegations considered that differential or special treatment for developing countries would be compatible with the adoption of a selective approach to the application of safeguard measures.

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[1] In Annex A of the Textiles Arrangement concerning the determination of a situation of "market disruption", it is stated that "... an imminent increase (in imports) shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries".

[2] The Textiles Arrangement provides in Article 3:7 that "If recourse is had to measures under this Article, participating countries shall, in introducing such measures, seek to avoid damage to the production and marketing of the exporting countries, and particularly of the developing countries...".

[3] The Textiles Arrangement lays down special treatment for new entrants to markets (cf. Article 6, paragraph 2).

21. At the initial meeting of Group 3(d), some delegations from developed countries were of the opinion that the safeguard provisions should be amended so that, in future, they would be applied only to countries whose exports were causing material injury. These delegations felt that the safeguard clause of the Textiles Arrangement provided an interesting precedent for the possibilities of a selective approach.[1]

22. Some other delegations from developed countries, however, said that the principle of non-discrimination in the application of safeguard measures should remain valid and any departure from this principle would necessarily lead to the proliferation of safeguard actions. These delegations reminded the Group that during the negotiations leading to the Textiles Arrangement, it was clearly understood that any solution arrived at in the context of textiles would not prejudge the position of any country in the multilateral trade negotiations.

Type of safeguard action

23. With regard to the suggestion that any safeguard measures applied to imports from developing countries should, in principle, take the form of an appropriate tariff surcharge, some delegations from developing countries have suggested that consideration might also be given to the use of import quotas so as to permit higher growth rates for imports from developing countries in those particular circumstances where emergency action might be considered against one or more developing countries.

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[1] The selective approach adopted in the Textiles Arrangement is limited to quantitative restrictions and other quantitative measures (cf. Preamble and Article 3). In Article 3 concerning safeguard provisions, it is stated that "this Article should only be resorted to sparingly and its application shall be limited to the precise products and to countries whose exports of such products are causing market disruption...". Further, the Arrangement provides that participating countries shall endeavour to avoid discriminatory measures as between different countries causing market disruption.

The Textiles Arrangement also provides for special treatment for small suppliers in connexion with export restraints (cf. Article 6, paragraph 3).

Under GATT Article XIV:2 provision is made for a contracting party applying restrictions for balance-of-payments reasons to temporarily deviate from the provisions of Article XIII (non-discrimination), with regard to a small part of its trade where the benefits to the contracting party or parties concerned substantially outweigh any injury to the trade of other contracting parties.

24. It might be noted in this connexion that Article XIX provides, inter alia, that "... the contracting party taking emergency action shall be free ... to suspend the obligation[1] in whole or in part or to withdraw or modify the concession".

Level of imports under restriction

25. It has been proposed by delegations from developing countries that safeguards applied to imports from developing countries should in no case result in a reduction of imports below the level obtaining prior to their introduction, and if the measure is applied beyond one year, provision should be made for an adequate rate of increase of the imports in question, greater than the rate applicable in similar cases to imports from developed countries.[2]

26. In this connexion, it was stated that the OECD High-Level Group[3] had suggested that countries applying safeguards should undertake not to reduce imports below the level established at the time the restrictive measures were applied and to allow imports to increase at a reasonable rate.

Duration of safeguard action

27. Some developing country delegations have proposed that safeguard measures against imports from developing countries should be applied for a period of no longer than twelve months. Any extension of this period should depend on further consultations between the developed country applying the measures and the

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[1] E.g. regarding the general obligation in Article XI concerning the elimination of quantitative restrictions.

[2] The Textiles Arrangement lays down the minimum level of imports under restrictions in the initial year and the growth rate of imports in the ensuing period if the restrictions remain in force (cf. paragraph 4 of Article 3 and Annex B). Under the Arrangement it is considered appropriate and consistent with equity obligations for importing countries to provide more favourable terms for developing countries with regard to restrictions including such elements as base level, growth rates and quotas, having in mind, however, that there should be no undue prejudice to the interests of established suppliers or serious distortion in existing patterns of trade (cf. Article 6, paragraph 1).

[3] See "Policy perspectives for international trade and economic relations" - OECD, 1972.

developing countries affected by the measures. If such consultations fail to produce satisfactory results, any extensions shall depend on an authorization by the appropriate multilateral body, which shall, inter alia, evaluate the adjustment assistance measures implemented by the country applying the safeguards.[1]

28. Article XIX provides that the action must only be taken "for such time as may be necessary to prevent or remedy such injury" and it is understood that "the Article provides only for a temporary relaxation of commitments, not for a permanent revision" (cf. Analytical Index, third revision, page 107). No detailed procedures exist, however, and the practice of different contracting parties has varied in this respect (cf. MTN/3D/1, paragraph 9 and Annex C).

29. With regard to duration, reference was also made by the representative of a developed country to the conclusions of the OECD High-Level Group to the effect that safeguards should be temporary in nature and be of short duration.

Consultation, compensation and retaliation

30. Delegations from developing countries have proposed that:

> "the application of safeguards should in all cases be preceded by consultations with the developing countries concerned with a view, inter alia, to assessing the fulfilment of criteria for the application of safeguard action to developing countries, to examining the alternative solutions and to determining adequate compensation for the developing countries;
>
> "if such consultations fail to produce satisfactory results, the application of safeguards should depend on authorization by (an appropriate multilateral body);

[1] The Textiles Arrangement lays down a time-limit for safeguard measures - one year, subject to renewal or extension under certain conditions (Article 3, paragraph 8). Under EFTA provisions, safeguard measures may be applied for a period of not more than eighteen months unless the Council decides on an extension. The Montevideo (LAFTA) Treaty provides that should the application of safeguard measures be prolonged for more than a year, the Standing Executive Committee shall propose the immediate initiation of negotiations with a view to eliminating the restrictions adopted.

"in the case of the application of safeguards to imports from developing countries in accordance with the procedure described above, and unless the appropriate multilateral body determines that the compensation offered is satisfactory, the developing countries shall, individually or collectively, have the right to suspend the application to the trade of the developed country having recourse to the safeguard measure of substantially equivalent concessions or other obligations".[1]

31. Paragraph 2 of Article XIX provides that a contracting party having recourse to emergency action must consult with other interested contracting parties before taking action, or exceptionally in critical circumstances, immediately after taking action. In about three quarters of such cases, consultations have been conducted post hoc. Broadly, a contracting party taking Article XIX action has a choice in the light of consultations which may have taken place of modifying the action to take into account the interests of other contracting parties, of granting compensation or of running the risk of retaliation (cf. MTN/3D/1, paragraphs 10-12).

32. Referring to the functioning of a multilateral surveillance body (see paragraph 34 below), delegations from developing countries stated that in those cases in which the body could determine that a developing country had not been responsible for the injury, the developed country which applied the safeguard measure should provide more than proportionate compensation to the affected exporting developing country.

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[1] Under the Textiles Arrangement, no safeguard action under Article 3 may be taken without at least one week's prior notification and prior consultations. An importing country is permitted to take action without the consent of the interested exporting countries only in cases where no agreement is reached in the consultations within sixty days or, in highly unusual and critical circumstances, where no mutually acceptable interim arrangement is concluded. In such cases, the matter may be referred to the Textiles Surveillance Body for its examination of the matter and recommendations.

In the case of EFTA, safeguard measures should be authorized by prior decision of the Council which must, if necessary, act within a period of fifteen days. Under the Montevideo (LAFTA) Treaty, the application of safeguard measures - non-discriminatory restrictions - requires the authorization of the Contracting Parties to LAFTA. However, if the situation calls for immediate action, the measures may be applied with an immediate notification to the Standing Executive Committee. The Committee should convene a special session of the Conference if it deems it necessary.

Supervision

33. At the first meeting of Group 3(d), some delegations said that any reform of the multilateral safeguard system should involve the setting up of an international surveillance mechanism[1] based on mutual commitments by both importing and exporting countries. Under such a mechanism, any safeguard action could be subjected to international scrutiny. Should the international community decide that the projected safeguard action was not in fact warranted, the importing country would be required to cease application of the measure within a given period of time and in the case of refusal to withdraw the measure, the exporting country would be authorized to take retaliatory action. These delegations could not support the idea put forward by other delegations that the decision whether a particular safeguard action was justified rested with the exporting country. It was incumbent on both importing and exporting countries to determine what remedial action should be taken.

34. Delegations from developing countries supported the idea of establishing a multilateral surveillance body to supervise the operation of the safeguard system. Such a multilateral surveillance body would, inter alia, be responsible for the establishment of rules and procedures for consulations, the determination of injury, and the application of differentiated treatment to the exports of developing countries.

Adjustment assistance measures

35. It was proposed by delegations from developing countries that in order to avoid the use of safeguard measures against developing countries, developed countries should undertake to rely primarily on national or regional adjustment assistance measures as a means for solving any problems that might arise from an increase in imports of specific products from developing countries. Further, the application of safeguard measures to imports from developing countries should be accompanied by prompt action to implement adjustment assistance. It was also suggested that the objective of adjustment assistance in developed countries should be to facilitate the re-allocation of resources to lines of production which are efficient and desirable in the light of domestic and world demand with due regard to the export interests of developing countries, and not to modernize inefficient lines of production competing with imports from developing countries.

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[1] A multilateral surveillance body has been operating since April 1974 within the framework of the Textiles Arrangement. The functions of the Textiles Surveillance Body (TSB) are described in Article 11 of the Arrangement (see Annex 6). As noted earlier, in the case of EFTA safeguard measures must be authorized by the Council.

36. At the first meeting of Group 3(d), some delegations pointed out that the international safeguard system should distinguish between measures appropriate to deal with short-term phenomena and measures appropriate to longer run structural problems. In the latter case where structural changes were required, these could be facilitated by adjustment assistance measures. It was, however, for national governments to decide to what degree such measures should be taken.

Application of safeguard measures by developing countries

37. Delegations of developing countries proposed that special provisions should be elaborated in order to facilitate the application by developing countries of safeguard measures, in accordance with their particular needs and interests. One of these delegations suggested that the rights of developing countries to maintain and introduce safeguard measures under rules and procedures which are no more stringent than at present provided in GATT should be preserved, due account being taken of their developmental needs in this regard. In this connexion, however, it may be noted that treaties establishing regional groupings of developing countries contain provisions for prior consultations and surveillance of safeguard actions affecting trade among member countries.

38. At the first meeting of Group 3(d), other delegations noted that developing countries had in a number of cases in the past resorted to Article XIX, and questioned whether there was any need to facilitate the application by developing countries of such measures.

Points for consideration[1]

39. The proposals made by delegations from developing countries suggest a number of criteria and conditions for the application of safeguard measures in relation to developing countries. These include (i) a sudden influx in imports from developing countries as being the major cause of serious injury, (ii) serious injury being substantiated, (iii) the application of safeguards not causing serious injury to developing countries, (iv) prior consultation among the parties concerned in cases where safeguard action is being contemplated by a developed country against imports from one or more developing countries or in cases where such action is primarily intended against imports from developed countries, but

[1]At the request of Group 3(d), the secretariat has drawn up in MTN/3D/4, a list of issues for consideration in connexion with an examination of the multilateral safeguard system. Members of the Group have been invited to supplement this list with any additional points they consider relevant.

is likely to affect imports from developing countries. Such consultations would provide, inter alia, an opportunity to assess compliance with any agreed criteria, to examine alternative solutions and to determine, where appropriate, adequate compensation for developing countries, (v) guaranteeing in the exceptional circumstances where action might be justified, a certain level of imports from the affected developing countries (e.g. by taking action in such manner that imports from developing countries would not be reduced below the level obtaining prior to its introduction and by making provision for growth in imports in the event that the action is extended beyond a certain time period). In addition, new developing country entrants to the market would be exempted from safeguard action and the special circumstances of the least developed among the developing countries taken into account in any application thereof, (vi) a time period for safeguard action against imports from developing countries (e.g. a maximum period of twelve months) and circumstances and conditions for extending the time period being prescribed, (vii) measures of adjustment assistance being used in the context of the application of safeguard measures and the interests of developing countries being protected through the use of such measures more specifically for the reallocation of resources and not for the modernization of less efficient lines of production competing with imports from developing countries, (viii) supervision by a surveillance body of differential or more favourable treatment for developing countries, such a body being, inter alia, responsible for the establishment of rules and procedures for consultations, the determination of injury and the supervision of provisions for differential treatment in respect of developing countries, (ix) possible provision for the taking of safeguard action by developing countries, having regard to their particular needs and interests.

40. The comments made by other delegations and the general discussions on the question of safeguards cover suggestions and views with respect to the provisions that might be made in a multilateral system on a number of points, e.g. (a) selective application, (b) the procedures for consultation, (c) the level of restrictions, (d) time-limit for the application of safeguard measures, (e) multilateral surveillance (f) the use of adjustment assistance measures, (g) the question of compensation. In addition some countries have pointed to a link between measures to remove tariff and non-tariff barriers to trade including quantitative restrictions on imports and the possibility of recourse to safeguard provisions in so far as in their view greater flexibility with respect to the latter would permit more far reaching action with respect to the former.

41. The question of more favourable or differential treatment for developing countries in the field of safeguards would, in the light of the above, seem to be a matter of (a) examining what agreements can be reached on the desirable and feasible features of a multilateral safeguard system, (b) what essential requirements or criteria need to be provided with respect to the use of safeguards in relation to developing countries, and (c) in the light of the conclusions reached with respect to these matters, determining the special or additional provisions or understandings that may be established with respect to the developing countries.

Annex 1

CONSULTATIONS CONCERNING THE IMPLEMENTATION OF PROVISIONS OF PART IV

Procedures Adopted by the Committee on Trade and Development at its Sixteenth Session on 23 March 1970

1. Once a problem of non-compliance is raised by one or more contracting parties in the Committee on Trade and Development or brought to the notice of the Committee through a communication addressed to the secretariat, the Committee may request the secretariat to prepare the necessary background documentation and to facilitate such consultations between the parties concerned as might be helpful.

2. The Committee shall review the matter on the basis of the background information furnished by the secretariat.

3. If in the meantime no solution has been reached, the Committee shall make such arrangements to examine the matter as are acceptable to the parties directly concerned which may include inter alia the establishment of a panel or a working party, taking into account the following guidelines:

(i) Composition

A panel will comprise governmental experts from contracting parties selected primarily for their familiarity with the problems involved. The experts will act in their personal capacity and not as representatives of their governments. Each panel may have up to seven members. Their nomination shall be made in consultation with the parties having a direct interest in the problems to be examined.

The membership of a working party will be established by the Committee on the basis of proposals by its chairman and will include all countries having a substantial interest in the matter.

(ii) Terms of reference of panels or working parties

To hold consultations with the contracting parties concerned in respect of any report on non-compliance with paragraph 1 of Article XXXVII raised by one or more contracting parties, and to report on how progress might be made in reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In conducting these consultations the panel or working party will also examine and report on reasons referred to in cases where effect was not being given to the provisions of paragraph 1 of Article XXXVII.

(iii) Proceedings

Each panel or working party should be free to seek relevant information on matters falling within its terms of reference from the contracting parties directly concerned and would be assisted by statistical and analytical data compiled by the secretariat.

(iv) Reports

Each panel or working party will report to the Committee on Trade and Development within a period of six months of its appointment, subject to such extension of the time-limit as may be agreed upon by the Committee.

The Committee shall inform the CONTRACTING PARTIES of the establishment of any panel or working party and of the results of the consultations carried out by it in terms of the foregoing procedures.

Annex 2

PROCEDURES UNDER ARTICLE XXIII

Decision of 5 April 1966[1]

The CONTRACTING PARTIES,

Recognizing that the prompt settlement of situations in which a contracting party considers that any benefits accruing to it directly or indirectly from the General Agreement are being impaired by measures taken by another contracting party, is essential to the effective functioning of the General Agreement and the maintenance of a proper balance between the rights and obligations of all contracting parties;

Recognizing further that the existence of such a situation can cause severe damage to the trade and economic development of the less-developed contracting parties; and

Affirming their resolve to facilitate the solution of such situations while taking fully into account the need for safeguarding both the present and potential trade of less-developed contracting parties affected by such measures;

Decide that:

1. If consultations between a less-developed contracting party and a developed contracting party in regard to any matter falling under paragraph 1 of Article XXIII do not lead to a satisfactory settlement, the less-developed

[1] The Chairman of the Committee on Trade and Development, in presenting the draft decision to the CONTRACTING PARTIES for adoption, asked to be placed on record the following understanding regarding its provisions:

(1) In consultations to be carried out by the Director-General under paragraph 3 of the draft decision, the Director-General would, in addition to the entities mentioned in that paragraph, be free to consult such experts as he considered would assist him in studying the facts and in finding solutions.

(2) With respect to paragraph 6 of the draft decision, the CONTRACTING PARTIES may provide more particular terms of reference for any such panel in order to assist them to assess the relative impact of the measures complained of on the economics of the contracting parties concerned and to consider the adequacy of any measures which those contracting parties would be prepared to take to remedy the situation. In establishing such particular terms of reference, the CONTRACTING PARTIES or the Council should bear in mind the desirability of having such panels appraise, in particular, the following elements:

(a) the damage incurred through the incidence of the measures complained of upon the export earnings and economic effort of the less-developed contracting party;

(b) the compensatory or remedial measures which the contracting party whose measures are complained of would be prepared to take to make good the damage inflicted by their application;

(c) the effects of such measures as the injured contracting party would be prepared to take in relation to the contracting party whose measures have nullified or impaired the benefits deriving from the General Agreement which the former contracting party is entitled to expect.

contracting party complaining of the measure may refer the matter which is the subject of consultations to the Director-General so that, acting in an *ex officio* capacity, he may use his good offices with a view to facilitating a solution.

2. To this effect the contracting parties concerned shall, at the request of the Director-General, promptly furnish all relevant information.

3. On receipt of this information, the Director-General shall consult with the contracting parties concerned and with such other contracting parties or inter-governmental organizations as he considers appropriate with a view to promoting a mutually acceptable solution.

4. After a period of two months from the commencement of the consultations referred to in paragraph 3 above, if no mutually satisfactory solution has been reached, the Director-General shall, at the request of one of the contracting parties concerned, bring the matter to the attention of the CONTRACTING PARTIES or the Council, to whom he shall submit a report on the action taken by him, together with all background information.

5. Upon receipt of the report, the CONTRACTING PARTIES or the Council shall forthwith appoint a panel of experts to examine the matter with a view to recommending appropriate solutions. The members of the panel shall act a personal capacity and shall be appointed in consultation with, and with the approval of, the contracting parties concerned.

6. In conducting its examination and having before it all the background information, the panel shall take due account of all the circumstances and considerations relating to the application of the measures complained of, and their impact on the trade and economic development of affected contracting parties.

7. The panel shall, within a period of sixty days from the date the matter was referred to it, submit its findings and recommendations to the CONTRACTING PARTIES or to the Council, for consideration and decision. Where the matter is referred to the Council, it may, in accordance with Rule 8 of the Intersessional Procedures adopted by the CONTRACTING PARTIES at their thirteenth session [1], address its recommendations directly to the interested contracting parties and concurrently report to the CONTRACTING PARTIES.

8. Within a period of ninety days from the date of the decision of the CONTRACTING PARTIES or the Council, the contracting party to which a recommendation is directed shall report to the CONTRACTING PARTIES or the Council on the action taken by it in pursuance of the decision.

9. If on examination of this report it is found that a contracting party to which a recommendation has been directed has not complied in full with the relevant recommendation of the CONTRACTING PARTIES or the Council, and that any benefit accruing directly or indirectly under the General Agreement continues in consequence to be nullified or impaired, and that the circumstances are serious enough to justify such action, the CONTRACTING PARTIES may authorize the affected contracting party or parties to suspend, in regard to the contracting party causing the damage, application of any concession or any other obligation under the General Agreement whose suspension is considered warranted, taking account of the circumstances.

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[1] BISD, Seventh Supplement, page 7.

10. In the event that a recommendation to a developed country by the CONTRACTING PARTIES is not applied within the time-limit prescribed in paragraph 8, the CONTRACTING PARTIES shall consider what measures, further to those undertaken under paragraph 9, should be taken to resolve the matter. [1]

11. If consultations, held under paragraph 2 of Article XXXVII, relate to restrictions for which there is no authority under any provisions fo the General Agreement, any of the parties to the consultations may, in the absence of a satisfactory solution, request that consultations be carried out by the CONTRACTING PARTIES pursuant to paragraph 2 of Article XXIII and in accordance with the procedures set out in the present decision, it being understood that a consultation held under paragraph 2 of Article XXXVII in respect of such restrictions will be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII if the parties to the consultations so agree.

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[1]The Committee agreed that the phrase "shall consider what measures" in paragraph 10 of the draft decision is intended to mean that the CONTRACTING PARTIES shall consider the matter with a view to finding appropriate solution.

Annex 3

STATEMENT BY THE BRAZILIAN REPRESENTATIVE ON SAFEGUARDS[1]

The revision, in the context of the multilateral trade negotiations, of existing escape clauses, in particular of the safeguard provisions of Article XIX of the General Agreement on Tariffs and Trade, should adequately reflect the interests of both the developed and the developing countries. As an integral part of this revision, special provisions and procedures should be established in order to regulate the application to developing countries of a differentiated treatment in this field. Such a special treatment would be in accordance with existing GATT provisions by which the particular needs and interests of the developing countries are recognized and with the objectives of the multilateral trade negotiations as stated in the summing-up by the Chairman at the twenty-eighth session of the CONTRACTING PARTIES. Furthermore, the special treatment for developing countries would be particularly compatible with the adoption of a selective approach to the application of safeguard measures.

It is proposed that such a special treatment should consist basically of provisions along the following lines.

I. As a general rule, safeguard measures shall not be applied by developed countries to imports of a product in such a manner as to affect the imports of the product in question from developing countries. In particular, imports of the product from developing countries who are new entrants in the markets of the developed countries shall be excluded from the application of safeguard measures. Developed countries have the obligation to implement adjustment assistance measures designed to avoid the need to resort to the application of safeguard measures against imports from developing countries. The application of safeguards to imports of a product by a developed country may only affect the imports of the product from developing countries in compelling and exceptional circumstances, which cannot be corrected within a reasonable period of time by the implementation of adjustment assistance measures or by other appropriate means, subject to all of the criteria set forth in sub-paragraph (a) and in accordance with the procedures and modalities described in sub-paragraph (b).

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[1] Issued as COM.TD/91

(a) - Criteria. In order to have recourse to the application of safeguards against imports from developing countries, a developed country must be in a position to prove that:

(i) an unforeseeable and substantial increase in the imports of a product from all sources has occurred;

(ii) the global increase is disproportionately greater than the rate of growth of domestic consumption of the product in the importing country and of the rate of growth of exports, if any, of the product by the developed country;

(iii) the major cause of this global increase is an unforeseeable and substantial increase in imports of the product from developing countries;

(iv) the increase in imports of the product from developing countries is the major cause of effectively verified serious injury to domestic producers of like products in the importing country, in terms of a reduction of the levels of production and employment;

(v) the application of the measure shall not cause serious injury to the developing countries, which is to be assessed both in terms of the present and the potential levels of production and employment and in terms of the present and potential importance of the product in question for the overall exports of the developing countries concerned as well as the importance of the market of the particular developed country for the exports of the product by the developing countries.

(b) - Procedures and modalities. The application of a safeguards measure by a developed country against imports from developing countries shall be subject to the following procedures and modalities:

(i) the application of safeguards shall in all cases be preceded by consultations with the developing countries concerned with a view, inter alia, to assessing the fulfilment of the criteria set forth in sub-paragraph (a), to examining alternative solutions and to determining adequate compensation for the developing countries;

(ii) if such consultations fail to produce satisfactory results, the application of safeguards shall depend on authorization by (an appropriate multilateral body), which shall be guided in its deliberations by the present provisions;

(iii) in the case of the application of safeguards to imports from developing countries in accordance with the procedure described in item (ii) above, and unless the (appropriate multilateral body) determines that the compensation offered is satisfactory, the developing countries shall, individually or collectively, have the right to suspend the application to the trade of the developed country having recourse to the safeguard measure of substantially equivalent concessions or other obligations;

(iv) the application of safeguards by a developed country to imports from developing countries shall always be accompanied by a commitment by the country applying the measure to promptly implement adjustment assistance measures;

(v) safeguard measures against imports from developing countries shall in principle take the form of an appropriate tariff surcharge; only exceptionally may a developed country resort to the adoption of quantitative restrictions;

(vi) safeguards applied to imports from developing countries shall in any case be designed not to secure a reduction of the imports below the level obtained prior to their introduction, but to provide for an adequate rate of increase of the imports in question, greater than the rate applicable, in similar cases, to imports from developed countries;

(vii) safeguard measures against imports from developing countries shall be applied for a period of no longer than twelve months;

(viii) any extension of the period established in item (vii) shall depend on further consultations between the developed country applying the safeguards and the developing countries affected by the measures and, if such consultations fail to produce satisfactory results, on authorization by the (appropriate multilateral body), which shall, inter alia, evaluate the adjustment assistance measures implemented by the country applying the safeguards.

II. Special provisions should be elaborated in order to facilitate the application by developing countries of safeguard measures, in accordance with their particular needs and interests.

Annex 4

STATEMENT BY THE NIGERIAN REPRESENTATIVE ON SAFEGUARDS[1]

1. This delegation has given serious consideration to the question of safeguards and adjustment assistance in the context of the forthcoming trade negotiation and the Nigerian delegation with the concurrence of the majority of the developing countries, members and non-members of GATT, has come to the belief that nothing short of the acceptance of the following general principles and objectives in respect of the application of safeguards and adjustment assistance could create the desirable conditions in international trade and result in additional benefits for the export trade of the developing countries from those negotiations. Hence, the Nigerian delegation wishes to put on record for the serious consideration of this Committee, the following important points.

2. In the use of safeguard and adjustment assistance measures, the developed countries should be guided by their declared objective of ensuring a rapid and sustained expansion of the export earnings of the developing countries, particularly the least developed among them, as well as their solemn undertaking to refrain from introducing or intensifying the incidence of trade barriers on imports from developing countries.

3. In order that the tariff reductions, bindings and preference, the liberalization of non-tariff barriers and other concessions that may be obtained by developing countries in the multilateral trade negotiations will be of real benefit to these countries, which will have to plan the development of their export production and allocate their investment resources on a long-term basis, the developed countries should undertake to rely primarily if not exclusively on national and regional adjustment assistance measures for solving any problems that might arise from an increase in imports of specific products from developing countries, and to desist from using safeguard measures against such imports.

4. To this end there shall be established, in the context of the multilateral negotiations, a set of rules governing the use of safeguard and adjustment assistance measures, applicable in the industrial as well as agricultural sector, which would ensure the continued and effective implementation of all benefits for developing countries, including the additional benefits which should be obtained by them particularly the least developed, in the forthcoming negotiations.

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[1] Issued as COM.TD/92

5. No safeguard action through the application of restrictions should be taken by developed countries against imports from any developing country. If, however, in compelling and exceptional circumstances such as those defined as a situation of "market disruption", such action is considered unavoidable in a specific case, the developed country should consult with any developing country concerned before the action is taken or, if this is for justifiable reasons impracticable, immediately thereafter.

6. Any such action should be the subject of an established procedure and requires in each case a specific authorization after examination in the light of the following criteria and considerations:

(a) The application of a safeguard measure against imports from a developing country must be due to compelling and exceptional circumstances which could not be met by other means.

(b) Application of the safeguard measure should be accompanied by action to bring about domestic adjustment so that the use of the safeguard mechanism will in fact be temporary.

(c) Import relief against imports from a developing country can be provided only in the face of serious injury caused to the domestic industry by a sudden influx of imports from that developing country, and not by imports from other sources or other factors unconnected with imports. A sudden rise in imports in itself shall be no sufficient justification for such action. Both the influx in imports and the serious injury must be substantiated and not merely considered likely by the importing country.

(d) The import relief measure should in no case result in a reduction in imports from the developing country concerned below the level attained prior to its introduction. On the contrary there should be provision for a reasonable annual increase if the measure is applied beyond one year.

(e) A developed country taking safeguard action shall be required to provide adequate compensation in the form of concessions on other products or other benefits to the developing countries whose export interest is affected by the action.

7. The GATT articles and rules concerning safeguards should be modified in order to make them consistent with paragraphs 4 and 5 above, and should, inter alia, have the effect of (i) exempting the developing countries from the effects of safeguard measures which under present rules would be applied to imports from all sources even when the disruption was caused by the exports of a developed country, (ii) substantially tightening the conditions for the application of safeguard measures against imports from developing countries, and (iii) preserving the rights of developing countries to maintain and to introduce safeguard measures under rules and procedures which are no more stringent than at present provided in GATT, due account being taken of their developmental needs in this regard.

8. In regard to all the points made above, a distinction should be drawn between the least developed countries and other developing countries so that the special circumstances and requirements of the former will be duly taken into account in the modified provisions on safeguards.

9. The developed countries should undertake measures for anticipatory structural re-adjustments and other measures in order to establish a new and equitable international division of labour, by enabling developing countries to diversify their economies, to increase the access of their products to the markets of developed countries and thus accelerate the rate of growth of the developing countries. Such adjustment assistance policies and programmes in developed countries should cover all domestic industrial and agricultural sectors which are sensitive to increased imports from developing countries.

10. In order to avoid the use of safeguard measures against imports from developing countries, the developed countries should undertake to adopt adjustment assistance measures whenever an increase in such imports causes or is likely to cause difficulties to domestic industry.

11. The objective of any policy of adjustment assistance in developed countries should be to facilitate the re-allocation of resources to lines of production which are efficient and desirable in the light of domestic and world demand with due regard to the export interests of developing countries, and not to modernize inefficient lines of production competing with imports from developing countries.

12. The criteria governing eligibility for adjustment assistance in developed countries should be explicit and liberal.

13. Multilateral consultative and supervisory machinery should be set up for the purpose of reviewing the policies and measures of adjustment assistance in developed countries, of interest to developing countries.

14. To reiterate the point that I have made above, the facts of my statement have the support of the majority of the developing countries in and outside the GATT.

Annex 5

Safeguards and standstill

Draft resolution submitted by Pakistan on behalf of the Group of 77 1/

The Committee on Manufactures,

Noting the various substantive documents prepared by the UNCTAD secretariat, including in particular documents TD/B/C.2/R.4, and TD/B/C.2/R.4/Supp.1 which are before the Committee,

Noting further that, particularly in recent years, there has been a recrudescence in the application of safeguards and circumvention of import restrictions by means of bilaterally agreed "voluntary" export restraints,

Recognizing that an improved multilateral safeguard system is essential for further liberalization and expansion of international trade, particularly that of the developing countries, and that the benefits to be derived by them from the generalized system of preferences may be adversely affected by the application of safeguards,

Bearing in mind that the question of safeguards, particularly the adequacy of the multilateral safeguard system of the General Agreement on Tariffs and Trade, will be considered in the multilateral trade negotiations, in the light of present conditions and efforts to achieve the further liberalization and expansion of international trade, with a view to ensuring not only the maintenance but also the improvement of the present level of access, taking into account the special situation, development problems and needs of developing countries,

Considering that developing countries face the urgent need to expand their exports of manufactures, semi-manufactures, processed and semi-processed agricultural products, and that in view of their structure of production and trade they bear a heavy and disproportionate burden resulting from export restrictions, including safeguards,

Considering further that an improved multilateral safeguard system would need to ensure that the burden of adjustment be borne to the extent possible by the importing country through concerted and improved programmes of domestic adjustment rather than the restriction of imports,

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1/ Report of the UNCTAD Trade and Development Board on the first part of it's fourteenth session (TD/B/528).

Recognizing that a multilateral safeguard system should, in particular, provide that developing countries as a general rule are exempted from the application of safeguards in view of their own level of economic development and degree of diversification of production and very narrow range of exports,

Reiterating that in no event should new quantitative restrictions, including embargoes and export restraints, or any trade-inhibiting measures be introduced, or existing restrictions be intensified, to the disadvantage of developing countries; and that the removal of existing quantitative restrictions should not result in the adoption of other restrictive measures, and that any departures from this principle should be governed by internationally agreed criteria and multilateral consultations and review procedures,

Recalling that the observance of standstill is of significant importance for the expansion of exports of developing countries in pursuance of which relevant provisions have been adopted by the Contracting Parties in Part IV of the General Agreement on Trade and Tariffs, reaffirmed in UNCTAD and reflected in the International Development Strategy,

Noting with considerable concern that there has been a tendency recently towards departure from the standstill by the developed countries adversely affecting the exports of developing countries,

Noting further the agreement reached in the Ministerial Meeting of the OECD countries in May 1974 to avoid for a year new trade restrictions,

1. Recommends that:

(a) As a general rule, safeguard measures shall not be applied to imports of products from developing countries;

(b) The application of safeguards by developed countries to imports from developing countries should only be admissible under compelling and exceptional circumstances, when the situation cannot be corrected by the implementation of adjustment assistance measures within a reasonable period of time or other appropriate means, and subject to pre-established criteria and procedures;

(c) Safeguard action by developed countries should always be of a temporary nature and its application admissible for no more than one year, and should always be accompanied by a commitment by the applying country to promptly implement adjustment assistance measures or other appropriate means;

(d) In arrangements leading to the formation, expansion and intensification of regional economic groupings of developed countries, no new tariffs or other barriers to trade will be introduced by the individual member countries of the economic grouping or by the grouping as a whole;

(e) The application of safeguards shall in all cases be preceded by consultations with the developing countries and, whenever necessary, in the appropriate multilateral form, with a view to assessing the exceptional and compelling circumstances which require such application, to examining alternative solutions and to determining adequate compensation for the developing country or countries affected;

(f) Developing countries are entitled, whenever a compensation is considered unsatisfactory by the appropriate multilateral organ or is not forthcoming, to suspend, collectively or individually, the application of equivalent concessions or other obligations to the trade of the developed country that applied the safeguard;

(g) Safeguards against imports from a developing country are only admissible in the case of serious and substantiated injury, sustained for a long period of time and caused by an influx of imports from such developing country;

(h) Safeguard action should in all cases be directed only to the developing country whose exports have caused the injury as defined in sub-paragraph (g) above, and not to imports from all sources or other factors unrelated to exports;

(i) The safeguards should in no case result in a reduction in imports from the developing country concerned below the level attained prior to the introduction of the safeguard measure and should be less stringent than the safeguard measure applicable, in similar situations, to imports from developed countries;

(j) Safeguards should be subject to multilateral annual review, and the country imposing them should, in the course of this review, provide adequate evidence for justifying their proposed maintenance;

(k) Special provisions on safeguard measures to be applied by developing countries should be evolved and elaborated, taking fully into account the particular needs and development interests of the developing countries;

(l) The developed countries should adhere strictly to the standstill with respect to imports from developing countries;

(m) The developed countries which have recently imposed new import restrictions adversely affecting the products of interest to developing countries should eliminate them as soon as possible;

2. Requests the Secretary-General of UNCTAD to transmit this resolution and the report of the Sessional Committee to the Director-General of GATT, drawing attention to the relevant section of the report relating in particular to the views of the developing countries in regard to safeguards, so that they may be taken into account in the multilateral trade negotiations,

3. Requests further the Secretary-General of UNCTAD also to transmit to the Director-General of GATT all relevant UNCTAD documentation concerning safeguards, in order to assist the developing countries in their participation in the trade negotiations.

Annex 6

PROVISIONS OF THE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES REFERRED TO IN THIS NOTE

PREAMBLE

Recognizing that future harmonious development of trade in textiles particularly having regard to the needs of developing countries, also depends importantly upon matters outside the scope of this Arrangement, and that such factors in this respect include progress leading both to the reduction of tariffs and to the maintenance and improvement of schemes of generalized preferences, in accordance with the Tokyo Declaration;

Article 3

1. Unless they are justified under the provisions of the GATT (including its Annexes and Protocols) no new restrictions on trade in textile products shall be introduced by participating countries nor shall existing restrictions be intensified, unless such action is justified under the provisions of this Article.

2. The participating countries agree that this Article should only be resorted to sparingly and its application shall be limited to the precise products and to countries whose exports of such products are causing market disruption as defined in Annex A taking full account of the agreed principles and objectives set out in this Arrangement and having full regard to the interests of both importing and exporting countries. Participating countries shall take into account imports from all countries and shall seek to preserve a proper measure of equity. They shall endeavour to avoid discriminatory measures where market disruption is caused by imports from more than one participating country and when resort to the application of this Article is unavoidable, bearing in mind the provisions of Article 6.

3. If, in the opinion of any participating importing country, its market in terms of the definition of market disruption in Annex A is being disrupted by imports of a certain textile product not already subject to restraint, it shall seek consultations with the participating exporting country or countries concerned with a view to removing such disruption. In its request the importing country may indicate the specific level at which it considers that exports of such products should be restrained, a level which shall not be lower than the general level indicated in Annex B. The exporting country or countries concerned shall respond promptly to such request for consultations. The importing country's request for consultations shall be accompanied by a detailed factual statement of the reasons and justification for the request, including the latest data concerning elements of market disruption, this information being communicated at the same time by the requesting country to the Chairman of the Textiles Surveillance Body.

4. If, in the consultation, there is mutual understanding that the situation calls for restrictions on trade in the textile product concerned, the level of restriction shall be fixed at a level not lower than the level indicated

in Annex B. Details of the agreement reached shall be communicated to the Textiles Surveillance Body which shall determine whether the agreement is justified in accordance with the provisions of this Arrangement.

5. (i) If, however, after a period of sixty days from the date on which the request has been received by the participating exporting country or countries, there has been no agreement either on the request for export restraint or on any alternative solution, the requesting participating country may decline to accept imports for retention from the participating country or countries referred to in paragraph 3 above of the textiles and textile products causing market disruption (as defined in Annex A) at a level for the twelve-month period beginning on the day when the request was received by the participating exporting country or countries not less than the level provided for in Annex B. Such level may be adjusted upwards to avoid undue hardship to the commercial participants in the trade involved to the extent possible consistent with the purposes of this Article. At the same time the matter shall be brought for immediate attention to the Textiles Surveillance Body.

(ii) However, it shall be open for either party to refer the matter to the Textiles Surveillance Body before the expiry of the period of sixty days.

(iii) In either case the Textiles Surveillance Body shall promptly conduct the examination of the matter and make appropriate recommendations to the parties directly concerned within thirty days from the date on which the matter is referred to it. Such recommendations shall also be forwarded to the Textiles Committee and to the GATT Council for their information. Upon receipt of such recommendations the participating countries concerned should review the measures taken or contemplated with regard to their institution, continuation, modification or discontinuation.

6. In highly unusual and critical circumstances, where imports of a textile product or products during the period of sixty days referred to in paragraph 5 above would cause serious market disruption giving rise to damage difficult to repair, the importing country shall request the exporting country concerned to co-operate immediately on a bilateral emergency basis to avoid such damage, and shall, at the same time, immediately communicate to the Textiles Surveillance Body the full details of the situation. The countries concerned may make any mutually acceptable interim arrangement they deem necessary to deal with the situation without prejudice

to consultations regarding the matter under paragraph 3 of this Article. In the event that such interim arrangement is not reached, temporary restraint measures may be applied at a level higher than that indicated in Annex B with a view, in particular, to avoiding undue hardship to the commercial participants in the trade involved. The importing country shall give, except where possibility exists of quick delivery which would undermine the purpose of such measure, at least one week's prior notification of such action to the participating exporting country or countries and enter into, or continue, consultations under paragraph 3 of this Article. When a measure is taken under this paragraph either party may refer the matter to the Textiles Surveillance Body. The Textiles Surveillance Body shall conduct its work in the manner provided for in paragraph 5 above. Upon receipt of recommendations from the Textiles Surveillance Body the participating importing country shall review the measures taken, and report thereon to the Textiles Surveillance Body.

7. If recourse is had to measures under this Article, participating countries shall, in introducing such measures, seek to avoid damage to the production and marketing of the exporting countries, and particularly of the developing countries, and shall avoid any such measures taking a form that could result in the establishment of additional non-tariff barriers to trade in textile products. They shall, through prompt consultations, provide for suitable procedures, particularly as regards goods which have been, or which are about to be, shipped. In the absence of agreement, the matter may be referred to the Textiles Surveillance Body, which shall make the appropriate recommendations.

8. Measures taken under this Article may be introduced for limited periods not exceeding one year, subject to renewal or extension for additional periods of one year, provided that agreement is reached between the participating countries directly concerned on such renewal or extension. In such cases, the provisions of Annex B shall apply. Proposals for renewal or extension, or modification or elimination or any disagreement thereon shall be submitted to the Textiles Surveillance Body, which shall make the appropriate recommendations. However, bilateral restraint agreements under this Article may be concluded for periods in excess of one year in accordance with the provisions of Annex B.

9. Participating countries shall keep under review any measures they have taken under this Article and shall afford any participating country or countries affected by such measures, adequate opportunity for consultation with a view to the elimination of the measures as soon as possible. They shall report from time to time, and in any case once a year, to the Textiles Surveillance Body on the progress made in the elimination of such measures.

Article 6

1. Recognizing the obligations of the participating countries to pay special attention to the needs of the developing countries, it shall be considered appropriate and consistent with equity obligations for those importing countries which apply restrictions under this Arrangement affecting the trade of developing countries to provide more favourable terms with regard to such restrictions, including elements such as base level and growth rates, than for other countries. In the case of developing countries whose exports are already subject to restrictions and if the restrictions are maintained under this Arrangement, provisions should be made for higher quotas and liberal growth rates. It shall, however, be borne in mind that there should be no undue prejudice to the interests of established suppliers or serious distortion in existing patterns of trade.

2. In recognition of the need for special treatment for exports of textile products from developing countries, the criterion of past performance shall not be applied in the establishment of quotas for their exports of products from those textile sectors in respect of which they are new entrants, in the markets concerned and a higher growth rate shall be accorded to such exports, having in mind that this special treatment should not cause undue prejudice to the interests of established suppliers or create serious distortions in existing patterns of trade.

3. Restraints on exports from participating countries whose total volume of textile exports is small in comparison with the total volume of exports of other countries should normally be avoided if the exports from such countries represent a small percentage of the total imports of textiles covered by this Arrangement of the importing country concerned.

4. Where restrictions are applied to trade in cotton textiles in terms of this Arrangement, special consideration will be given to the importance of this trade to the developing countries concerned in determining the size of quotas and the growth element.

5. Participating countries shall not, as far as possible, maintain restraints on trade in textile products originating in other participating countries which are imported under a system of temporary importation for re-export after processing, subject to a satisfactory system of control and certification.

6. Consideration shall be given to special and differential treatment to re-imports into a participating country of textile products which that country has exported to another participating country for processing and subsequent re-importation, in the light of the special nature of such trade without prejudice to the provisions of Article 3.

Article 11

1. The Textiles Committee shall establish a Textiles Surveillance Body to supervise the implementation of this Arrangement. It shall consist of a Chairman and eight members to be appointed by the parties to this Arrangement on a basis to be determined by the Textiles Committee so as to ensure its efficient operation. In order to keep its membership balanced and broadly representative of the parties to this Arrangement provision shall be made for rotation of the members as appropriate.

2. The Textiles Surveillance Body shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Arrangement. It shall rely on information to be supplied by the participating countries, supplemented by any necessary details and clarification it may decide to seek from them or from other sources. Further, it may rely for technical assistance on the services of the GATT secretariat and may also hear technical experts proposed by one or more of its members.

3. The Textiles Surveillance Body shall take the action specifically required of it in articles of this Arrangement.

4. In the absence of any mutually agreed solution in bilateral negotiations or consultations between participating countries provided for in this Arrangement, the Textiles Surveillance Body at the request of either party, and following a thorough and prompt consideration of the matter, shall make recommendations to the parties concerned.

5. The Textiles Surveillance Body shall, at the request of any participating country, review promptly any particular measures or arrangements which that country considers to be detrimental to its interests where consultations between it and the participating countries directly concerned have failed to produce a satisfactory solution. It shall make recommendations as appropriate to the participating country or countries concerned.

6. Before formulating its recommendations on any particular matter referred to it, the Textiles Surveillance Body shall invite participation of such participating countries as may be directly affected by the matter in question.

7. When the Textiles Surveillance Body is called upon to make recommendations or findings it shall do so, except when otherwise provided in this Arrangement, within a period of thirty days whenever practicable. All such recommendations or findings shall be communicated to the Textiles Committee for the information of its members.

8. Participating countries shall endeavour to accept in full the recommendations of the Textiles Surveillance Body. Whenever they consider themselves unable to follow any such recommendations, they shall forthwith inform the Textiles Surveillance Body of the reasons therefor and of the extent, if any, to which they are able to follow the recommendations.

9. If, following recommendations by the Textiles Surveillance Body, problems continue to exist between the parties, these may be brought before the Textiles Committee or before the GATT Council through the normal GATT procedures.

10. Any recommendations and observations of the Textiles Surveillance Body would be taken into account should the matters related to such recommendations and observations subsequently be brought before the CONTRACTING PARTIES to the GATT, particularly under the procedures of Article XXIII of the GATT.

11. The Textiles Surveillance Body shall, within fifteen months of the coming into force of this Arrangement, and at least annually thereafter, review all restrictions on textile products maintained by participating countries at the commencement of this Arrangement, and submit its findings to the Textiles Committee.

12. The Textiles Surveillance Body shall annually review all restrictions introduced or bilateral agreements entered into by participating countries concerning trade in textile products since the coming into force of this Arrangement, and required to be reported to it under the provisions of this Arrangement, and report annually its findings to the Textiles Committee.

ANNEX A

I. The determination of a situation of " market disruption ", as referred to in this Arrangement, shall be based on the existence of serious damage to domestic producers or actual threat thereof. Such damage must demonstrably be caused by the factors set out in paragraph II below and not by factors such as technological changes or changes in consumer preference which are instrumental in switches to like and/or directly competitive products made by the same industry, or similar factors. The existence of damage shall be determined on the basis of an examination of the appropriate factors having a bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investments. No one or several of these factors can necessarily give decisive guidance.

II. The factors causing market disruption referred to in paragraph I above and which generally appear in combination are as follows:

(i) a sharp and substantial increase or imminent increase of imports of particular products from particular sources. Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Such prices shall be compared both with the price for the domestic product at comparable stage of commercial transaction, and with the prices which normally prevail for such products sold in the ordinary course of trade and under open market conditions by other exporting countries in the importing country.

III. In considering questions of " market disruption " account shall be taken of the interests of the exporting country, especially in regard to its stage of development, the importance of the textile sector to the economy. the employment situation, overall balance of trade in textiles, trade balance with the importing country concerned and overall balance of payments.

ANNEX B

1. (*a*) The level below which imports or exports of textile products may not be restrained under the provisions of Article 3 shall be the level of actual imports or exports of such products during the twelve-month period terminating two months or, where data are not available, three months preceding the month in which the request for consultation is made, or, where applicable, the date of institution of such domestic procedure relating to market disruption in textiles as may be required by national legislation, or two months or, where data are not available, three months prior to the month in which the request for consultation is made as a result of such domestic procedure, whichever period is the later.

(*b*) Where a restraint on the yearly level of exports or imports exists between participating countries concerned, whether provided for under Article 2, 3 or 4, covering the twelve-month period referred to in paragraph (*a*), the level below which imports of textile products causing market disruption may not be restrained under the provisions of Article 3 shall be the level provided for in the restraint in lieu of the level of actual imports or exports during the twelve-month period referred to in paragraph (*a*).

Where the twelve-month period referred to in paragraph (*a*) overlaps in part with the period covered by the restraint, the level shall be:

(i) the level provided for in the restraint, or the level of actual imports or exports, whichever is higher, except in case of overshipment, for the months where the period covered by the restraint and the twelve-month period referred to in paragraph (*a*) overlap; and

(ii) the level of actual imports or exports for the months where no overlap occurs.

(*c*) If the period referred to in paragraph (*a*) is specially adverse for a particular exporting country due to abnormal circumstances, the past performance of imports from that country over a period of years should be taken into account.

(*d*) Where imports or exports of textile products subject to restraints were nil or negligible during the twelve-month period referred to in paragraph (*a*), a reasonable import level to take account of future possibilities of the exporting country shall be established through consultation between the participating countries concerned.

2. Should the restraint measures remain in force for another twelve-month period, the level for that period shall not be lower than the level specified for the preceding twelve-month period, increased by not less than

6 per cent for products under restraint. In exceptional cases where there are clear grounds for holding that the situation of market disruption will recur if the above growth rate is implemented, a lower positive growth rate may be decided upon after consultation with the exporting country or countries concerned. In exceptional cases where participating importing countries have small markets, an exceptionally high level of imports and a correspondingly low level of domestic production and where the implementation of the above growth rate would cause damage to those countries' minimum viable production, a lower positive growth rate may be decided upon after consultation with the exporting country or countries concerned.

3. Should the restraint measures remain in force for further periods, the level for each subsequent period shall not be lower than the level specified for the preceding twelve-month period, increased by six per cent, unless there is further new evidence which demonstrates, in accordance with Annex A, that implementation of the above growth rate would exacerbate the situation of market disruption. In these circumstances, after consultation with the exporting country concerned, and reference to the Textiles Surveillance Body in accordance with the procedures of Article 3 a lower positive growth rate may be applied.

4. In the event any restriction or limitation is established under Article 3 or 4 on a product or products as to which a restriction or limitation had been suppressed in accordance with the provisions of Article 2, such subsequent restriction or limitation shall not be re-established without full consideration of the limits of trade provided for under such suppressed restriction or limitation.

5. Where restraint is exercised for more than one product the participating countries agree that, provided that the total exports subject to restraint do not exceed the aggregate level for all products so restrained (on the basis of a common unit to be determined by the participating countries concerned), the agreed level for any one product may be exceeded by 7 per cent save in exceptionally and sparingly used circumstances where a lower percentage may be justified in which case that lower percentage shall be not less than 5 per cent. Where restraints are established for more years than one, the extent to which the total of the restraint level for one product or product group may, after consultation between the parties concerned, be exceeded in either year of any two subsequent years by carry forward and/or carryover is 10 per cent of which carry forward shall not represent more than 5 per cent.

6. In the application of the restraint levels and growth rates specified in paragraphs 1 to 3 above, full account shall be taken of the provisions of Article 6.