

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## EXAMINATION OF THE OPERATION OF THE PRESENT MULTILATERAL SAFEGUARD SYSTEM WITH A VIEW TO REVEALLING ANY INADEQUACIES

Statement by the Representative of Australia  
on 30 June 1975

1. We accepted at the April meeting of this Group that the task at this meeting would be to examine the existing multilateral safeguard system with a view to revealing any inadequacies. The Tokyo Declaration specifically recognizes the dependence of trade liberalization on an effective safeguard system. The binding at reduced levels of barriers to trade may indeed involve unforeseen difficulties for particular industries. In such cases it is essential that governments be able to effectively intervene to prevent disruption that is unacceptable for economic or social reasons. However, the intervention can be either too effective or not effective enough. There are different possibilities of intervention. The rules of international trade can make it difficult for governments to take legitimate measures to prevent domestic upheaval; or, alternatively governments can use those rules to permanently exclude sensitive industries from world trade liberalization and thus to preclude any question of emergency action or safeguards. The question we have to consider at this meeting is whether, and the extent to which, the safeguards system errs in one direction or the other, or is otherwise inadequate.
2. Australia suggested at the last meeting a list of escape or exception measures the history of which and the experience in which ought to be considered in the present context. This has been the subject of a valuable paper by the secretariat - MTN/W/13.
3. As noted in paragraph 3 of that document the fact that certain measures are mentioned does not prejudice the definition of the term safeguards. And indeed the various measures canvassed seem to include anything from more or less permanent protective action to action of an emergency type.
4. We believe that it would not be helpful at this stage of the discussion to try to define safeguards but, as is done in document MTN/W/13 those kinds of measures that would be embraced in any definition of a safeguarding system are eligible for discussion, so that misconceptions can be cleared away and so that common ground can be established on the meaning of terms for our discussions.



5. Taking the present system as it is, and on that basis our view is that we will come to a situation in which safeguards are recognized as being related to commitments. That is to say, if you do not have commitments then you are free to take protective action and therefore you do not need safeguard cover in any technical sense. Safeguards are necessary because Governments retain the right to protect an industry, as demonstrated by Article XIX and XXVIII as well as by measures inconsistent with the GATT. Irrespective of the system, we think the need to retain this right is not arguable.

6. Under the General Agreement import restrictions for protective purposes are prescribed and in respect of bound items you can't impose extra duties or charges as you are only able to take protective action through an escape clause. Article XIX was written in for that purpose.

7. But if the emergency is protracted beyond the specific period of commitment then you can invoke Article XXVIII to renegotiate the commitment.

8. We believe that some types of measures obviate or are so operated as to obviate the need for resort to classical escape clause action because they insulate the industry concerned from world trade competition to such an extent or so flexibly that emergency situations do not arise. This seems to have been the case with variable levies; some State Trading Organizations operate so as to produce the same effect as a tariff, some the same effect as a quantitative restriction and under those operations emergency situations just don't arise. Quantitative restrictions can obviate the need for emergency action.

9. Certain safeguarding action is explicitly in breach of GATT - here we have in mind quantitative restrictions which a number of countries continue to maintain without any GATT justification. These quantitative restrictions amount to a defacto escape clause, isolating the domestic industries concerned from world trade competition, justifying the withdrawal of substantially equivalent concessions or the suspension of substantially equivalent obligations. The fact that that kind of "winding down" operation - that process of deliberalizing trade - does not always make sense has been a restraining factor but the rights remain.

10. Some other uses of escape clause action have GATT cover. For example under Article XXV, countries may, with the consent of the Contracting Parties, be relieved of an obligation under the General Agreement. The waivers authorized under this general escape clause have covered a variety of different emergency measures. Few of them have been for safeguard reasons, the major exception being the waiver granted to the United States.



11. The Protocol of Provisional Application allows countries to continue to take action inconsistent with Part 11 of the GATT provided it is authorized by domestic legislation predating the GATT. Under this heading the most significant case appears to be the countervailing legislation of the United States, which is mentioned in the present context because it seems, through the absence of an injury test, to allow for safeguarding action when it is not needed. There is also the Swiss Protocol of Accession under which Switzerland maintains quota controls on a wide variety of agricultural products of interest to world traders. Switzerland doesn't need to invoke Article XIX on agriculture the way Australia has invoked it on footwear.

12. As regards Article XIX, according to MTN/3D/1 and MTN/W/13 there have been seventy-one cases of which twenty-four are still in force. Approximately one third of the actions had lasted one year or less and half had lasted five years' or less. Average duration of the measures was approximately five years, this figure reflecting a few Article XIX actions that have been in force for very long periods of time. Setting aside the fact that the statistics of Article XIX for the reasons I have been discussing give only a partial picture, we could perhaps still say this result is by no means satisfactory. It nevertheless seems a reasonable conclusion that Article XIX has been a less significant obstacle to liberalization of international trade than the other safeguard measures described above, all of which operate on a permanent or semi-permanent basis, and that a major problem in the area of safeguards is to bring about a real liberalization of trade where at present this is denied so that the structure of commitments applies equitably to all contracting parties, i.e. the need for safeguard action has to start from matching degrees of liberalization.

13. A number of countries have referred to Article XXVIII in the context of the present safeguards system. The secretariat analysis in MTN/3D/2 concludes that "considering the thousands of bindings in GATT, the relatively small number of cases brought before GATT shows that where bindings exist they have provided an element of stability. The Article can thus be considered to have served a useful means of safeguarding access for exporters". It has enabled more rather than less bindings to be undertaken. It is also an essential part of the system that you need to be able to re-negotiate a commitment if necessary. Article XXVIII gives the essential right to re-negotiate a commitment that turns out to be too onerous.

14. With regard to developing countries, the only cases surveyed in document MTN/SG/W/3 relating to Australian actions affecting developing countries were both Article XIX actions. We look forward to hearing the interpretation of the developing countries of the information set out in that document. However, we consider the whole concept of safeguard action requires to be developed to fit today's circumstances, and as we go along we can relate what we are doing to the circumstances of developing countries.



15. Having briefly surveyed the sort of safeguard action which countries have used, and also the protective régimes which have in certain important cases made irrelevant the question of the use of emergency action, we are now in a position to make some general comparisons. We can take for discussion three of the issues that have been under review in the safeguards area:

- duration of the measure;
- whether the safeguarding action is accompanied by any structural adjustment programme (and I add or other steps to normalize the situation (such as Article XXVIII));
- whether there is any notification or consultation procedure.

A further question that has been raised which may be reviewed by some as an inadequacy is whether safeguarding action should be non-discriminatory. We recognize there are arguments for this approach that at first sight carry weight, but it is our view that the real basis of the GATT would at least be eroded and possibly destroyed if the requirement of non-discrimination were abandoned.

16. Taking the overt safeguards and leaving aside any concealed ones cloaked by variable levies or State trading we find that most quantitative restrictions are of extremely long standing. Many have been in existence as long as or longer than the GATT itself.

17. Similarly the Protocols of Provisional Application and Accession though within GATT have no terminal date. As regards the United States Article XXV Waiver, there is a general obligation on the United States to move towards the removal of the measures in respect of which the Waiver is granted, but this has so far had no effect. These Protocols and this Waiver upset the balance of the GATT for agricultural exporters. Article XIX actions on the other hand have by comparison been of relatively short duration, the majority of them having been terminated.

18. In the matter of structural adjustment, there are probably grounds for criticism of all the existing safeguard measures. However in terms of what has happened historically the fact that most Article XIX actions have terminated suggests that the problem was short term in character or some structural adjustments have taken place or the relevant commitment has been renegotiated.



19. Finally we may briefly look at notification and consultation requirements. For State trading enterprises there is provision for full notifications every three years with intervening notification as appropriate. In the case of non-tariff import charges there are no consultation requirements. Why should there be? Well, to anticipate future discussions, we put the thought that any device that automatically precludes price competition might need to be the subject of some requirement of notification and consultation. Quantitative restrictions have been notified since 1960, but there has been no provision for consultations on a systematic basis apart from the recent arrangement in the Multilateral Trade Negotiations. Something will have to be done there. Long duration does not constitute a justification or make imbalance any more acceptable.

20. The United States Article XXV Waiver is subject to annual report and biennial review. It should be picked up in the quantitative restriction context.

21. There is no provision for notification of measures benefiting under the Protocol of Provisional Application. We should examine the continued need for this Protocol.

22. Article XIX requires that the invoking country consult with any interested country before the action or post hoc in an emergency situation but there is an escape door which has been the rule not the exception. Action under Article XXVIII requires prior consultation with interested countries.

23. The conclusion we draw from all this is that there has been a very significant imbalance in the way safeguard action has been used by various countries. The most important element in this imbalance is the use by certain countries of protective barriers which are so operated that there is simply no need for an escape clause - the measure largely or completely precludes the possibility of an emergency situation developing. Certain other measures such as quantitative restrictions or "voluntary" export restraints are either in breach of or outside the GATT and so not subject to the GATT disciplines on escape clause action. Then there are other provisions of the GATT under which countries take escape action which are not subject to the same discipline as the action under the explicit emergency action provision Article XIX. To put our conclusion briefly, we could say that the structure of commitments and the framework of rules should be such that the processes of protection should be equally transparent for all contracting parties and for emergency action there should be an equal requirement of recourse to Article XIX.



When we have informed ourselves about the possibilities in this direction, so that Article XIX would have the same kind of weight for all contracting parties, we can look more closely at the characteristics of the operation of that Article.

24. A further aspect which has received little attention is the question of importer and exporter obligations. As already noted there is a presumption that emergency action arises only in relation to fair trade and that unfair trade is dealt with under anti-dumping or countervailing duty action and so on. In real life however it may not be so for two reasons. Firstly, facts are not always easy to discover; secondly, such situations as undervalued exchange rates may involve an element of subjective judgement or it may take a long time for the real situation to be discerned or for corrective action to work.

In any case it is our view that there is an onus on an exporting country whose exports are causing market disruption to consult when required and to put the facts on the table in conjunction with similar action by the importing country. Such consultation is an essential part of the process of orderly expansion of trade. Whether exporters' obligations should extend further is a matter for consideration.

We ourselves have seen, however, that on the one hand some importing countries have failed to consult with us when imposing safeguard action on our exports. On the other hand, some exporting countries have not recognized a responsibility in relation to the impact of their exports upon the Australian market.

Our conclusion here is that there should be consideration of the balance of obligation among exporters and importers with the object of constructing a safeguard system that leads to an orderly expansion of trade. If we look upon the safeguard mechanism as designed to lead to an orderly expansion of trade then whether we look at it from an exporter or an importer point of view, and a greater readiness to consult would be helpful.

25. Another aspect of imbalance in the operation of the safeguard system is that some countries have been prepared to allow imports of particular products from particular countries, especially developing countries, to obtain a much greater share of the domestic market than have other importing countries. In some cases this is not so much a question of the degree of market disruption which is acceptable: it is a question of whether any significant imports at all are allowed. This is a difficult issue. It does lead to the reflection that in some cases consultation among importers as well as between an individual exporter and individual importing country is likely to be necessary.



26. To sum up we believe;

- that a safeguard system is necessary as each country has to have the right to protect a domestic industry
- that any safeguard system should not be so rigid or on the other hand so flexible that it nullifies its purpose; there has to be a balance.

There are at least three elements in the safeguard system that we should now consider with some care. Other delegations may propose additional topics but the three that we put forward are:

- (a) the processes of protection should be equally transparent for all contracting parties and there should be an equal requirement of recourse to the provisions that are designed to cover emergency action.
- (b) There should be consideration of the balance of obligations between exporters and importers in cases of market disruption.
- (c) In some cases there may be need for consideration of the relative position among importing countries.