

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

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Group "Safeguards"

## NOTE BY THE DELEGATION OF MEXICO

1. In paragraph 3(d) of the Tokyo Declaration, the countries established that the negotiations should aim, inter alia, to "include an examination of the adequacy of the multilateral safeguard system, considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results". Furthermore, in paragraph 5 of the same Declaration, the Ministers recognized "the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of the negotiation where this is feasible and appropriate".
2. The examination of the adequacy of the multilateral safeguard system is of special interest to the developing countries, above all in the light of the results deriving from application of the relevant provisions to those countries. Thus, the study carried out by the secretariat (MTN/3D/5) shows that out of fifty instances in which developed countries had had recourse to such action, at least one half involved products exported by developing countries, whereas in only about one quarter of the cases were developing countries among the suppliers participating in the increase in imports of the products in respect of which action was taken, and the import share of these countries was more significant in some products than in others (paragraph 12).
3. Furthermore the document notes 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 (paragraph 14). This situation nullifies investment and promotion efforts made in respect of production and exports on the basis of trade aspirations resulting from the negotiations, aspirations that have to be abandoned when a safeguard measure is imposed and maintained indefinitely, and the repercussions

on developing countries are very serious. We believe, therefore, that as a general rule safeguard measures must always be of a temporary nature.

4. The situation described above is all the more relevant because the General Agreement provides, in Part IV, Article XXXVII:3(c) 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".

5. In addition to the provisions of Article XXXVII:3(c), the Tokyo Declaration establishes, in paragraph 2, that the negotiations are to aim to "secure additional benefits for the international trade of developing countries so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, the acceleration of the rate of growth of their trade, taking into account their development needs, an improvement in the possibilities for these countries to participate in the expansion of world trade and a better balance as between developed and developing countries in the sharing of the advantages resulting from this expansion, through, in the largest possible measure, a substantial improvement in the conditions of access for the products of interest to the developing countries ...". Likewise, as already mentioned, paragraph 5 recognizes "the need for special measures to be taken in the negotiations to assist the developing countries in their efforts to increase their export earnings and promote their economic development" and, furthermore, "the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of the negotiation where this is feasible and appropriate." It should be mentioned, moreover, that given the import requirements of the developing countries, the latter are clearly not in a position to take retaliatory action if a safeguard measure is imposed, because of the disruption that might result for their development process. Lastly, and still more important, the developing countries themselves, within the framework of LAFTA for example, have established a system of differential and more favourable treatment for countries that are relatively less developed from the economic aspect. Thus, within the framework of LAFTA, under the Montevideo Treaty and Resolution 173, the relatively less developed countries (Paraguay, Bolivia, Ecuador and Uruguay) are excluded from the application of restrictive measures applied for balance-of-payments reasons (Article 24 of the Montevideo Treaty) and from the application of emergency measures on an ad referendum basis (Article 25). Furthermore, under the voting rules in force in LAFTA, the application of safeguard clauses by reason of injury or threat of injury attributable to imports of specific products (Article 23), is subject to explicit approval by the Standing Executive Committee, in which the relatively less developed countries are represented on an

equal footing. In practice, this has meant that a safeguard measure has never been applied against a relatively less developed country, in other words there is in fact, a system of exceptions in their favour, a concept that we suggest should be applied in this forum.

6. One can see, therefore, that in the examination of the adequacy of the multilateral safeguard system in these trade negotiations, special procedures are needed in respect of the developing countries in order to prevent nullification of the concessions negotiated in their favour.

7. In the view of the Mexican delegation, it follows from the foregoing that at the international level there are sufficient bases to justify special treatment for this group of countries. In this respect, it should be mentioned that one of the guiding principles of the multilateral safeguard system should be that developing countries are excluded from the application of such measures. This principle should be applied even in emergency situations, where the relevant measures should be applied only as between developed countries unless, after detailed examination of the situation by a multilateral surveillance body, it is found impossible in practice to provide such an exception; in such a case care should be taken to ensure that, first, the scope and impact of the measure is less for developing countries and, second, that it is eliminated more rapidly in respect of these countries.

8. In view of the foregoing, we believe that in establishing a multilateral safeguard system, special consideration must be given to the concepts of damage, threat of injury, injury and critical circumstances, either so as to afford an exception for developing countries or to allow differential treatment in respect of them if safeguard measures are applied.

9. In any case, it is proposed that where a developing country could be affected, there must always be prior consultation regarding those countries. Accordingly, the notification and consultation procedures will have to be strengthened considerably, it being understood that in the event of general emergency action, where prior consultation is not feasible, the developing countries would have to be exempted from such action.

10. As regards application of general safeguard measures, where these have been duly examined and sanctioned by a multilateral surveillance body and it has been found impossible to exclude the developing countries and all other possibilities for avoiding the application of such measures have been exhausted, in accordance with the spirit of Article XXXVII of the General Agreement, it would be appropriate to fix a minimum import level below which restrictive measures would not be applied. In the case of developing countries, this minimum level must be fixed in such a way as not to affect adequate growth of their production and exports. As regards the provision regarding development of imports, after the application of the measure concerned higher export growth rates should be fixed for developing countries than for developed exporters, so as to ensure increasing participation by the developing countries in trade expansion.

11. The concepts of "reconversion" and "adjustment" should be understood as implying the application of measures tending to transfer resources from one inefficient economic activity or industrial sector, which has not been able adequately to face competition generated by increased imports, to other activities or sectors where those resources will be more productive, without thereby adversely affecting the export trade of developing countries.

12. The fact that there are production activities in developed countries that coincide with production activities and exports of developing countries can sometimes result in the adoption of restrictive measures by the developed countries, because of the inefficiency of their production and the proved export capacity of developing countries. In such cases, the developed countries should carry out prior studies in order to assemble information as to the likelihood of an emergency situation in some sectors, and should take the necessary adjustment measures so as to avoid the possible application of safeguards.