

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

Multilateral Trade Negotiations

Original: English

Group "Safeguards"

JAPAN'S VIEW ON THE MULTILATERAL SAFEGUARD SYSTEM

1. The work in Group "Safeguards" on the multilateral safeguard system has an important bearing on the furtherance of trade liberalization and the preservation of its results. The work of this Group should, therefore, be conducted in line with and in pursuit of these basic objectives.

In Japan's view, it is of vital importance to secure correct and appropriate use of the safeguard provisions. This would be essential in preserving the results of liberalization achieved through the MTN, and in preventing their erosion through possible abusive invocation of safeguard measures. Thus, as repeatedly stressed in this Group by the Japanese delegation, it could not subscribe to a course of action that aims at achieving an agreement on safeguard provisions designed solely to make more facile the introduction of safeguard measures. W

At the same time, in the view of the Japanese delegation, the examinations in this Group should focus on Article XIX.

2. (1) In the view of the Japanese delegation, the current provisions of Article XIX strike basically a sound balance, and there is little need to revise the basic structure of the Article. The appropriate course of action in this Group would thus be to conduct examinations with a view to securing the appropriate use of Article XIX.

(2) As one means of achieving this objective of securing an appropriate application of Article XIX, the Group could usefully explore the possibility of drawing up an international agreement in the form such as a code or an interpretative note which would serve as a guideline to the use of the Article.

(3) It has been stated that due to its deficiencies Article XIX has not always been made use of by all countries. However, the fact that there have been approximately 80 cases of its invocation with about 20 cases still in force, in our view, testifies to the practicability of the provisions of Article XIX.

3. Japan's basic views on some of the main elements in the multilateral safeguard system are as follows:

(1) Non-discriminatory application

(a) The principle of non-discriminatory application is not only the basic premise on which provisions of the General Agreement are built, but also serves as an important deterrent against abuse of safeguard measures. The Japanese delegation thus attaches great importance to the up-holding of this basic principle.

While there have been strong protectionist pressures, many of them have not resulted in actual invocation of safeguard measures. To a large extent, this seems to be attributable to the presence of the principle of non-discriminatory application. In our view, selective application, if permitted, could lead to proliferation of easy-going trade restrictive measures.

(b) A safeguard measure is, in its nature, a temporary protective measure to be accorded to an industry faced with difficulties caused by increased imports. In securing such temporary relief to an industry, the introduction of measures against specified exporting countries would amount to an introduction of a concept of penalty which in the view of this delegation, would be unacceptable in the light of the Preamble of the GATT. It must be emphasized that Article XIX relates to protection for certain specific sectors and does not relate to measures against specified exporting partners.

(c) It would also be extremely difficult to specify which exporting countries are the real cause of serious injury with respect to certain products. In selecting the exporting countries to which a safeguard measure were to be applied, therefore, it would not be possible to exclude some elements of arbitrary judgement.

(d) Furthermore, if the multilateral safeguard system of non-discriminatory application were permitted, as it were, to dissolve itself to bilateral actions, this would tend to weaken the bargaining power of the exporting countries and could result in an increase of trade restrictive measures.

(2) Retaliation and compensation

(a) In the view of the Japanese delegation, the rights of the affected exporting countries to resort to retaliatory actions under Article XIX:3 is essential as deterrent against abuse of safeguard provisions and the last resort to ensure the normative character of the Article.

(b) The concept of offering compensations constitutes an integral part of Article XIX. This concept should be retained in the multilateral safeguard system so as to maintain the global level of liberalization which has been attained through a series of hard and difficult negotiations among nations and so as to contain the safeguard measures to the minimum restrictive level necessary when invocation of the measure becomes unavoidable. Furthermore, in the light of the fact that in many cases realistic settlements have been reached through the offer of compensations, the practical usefulness of compensation could not be denied.

(c) For these reasons, the Japanese delegation could not agree with the view that the right to retaliate be restricted and the obligation to compensate be exempted with respect to those safeguard measures which have been invoked in full accordance with certain agreed criteria.

(3) Time-limit and degressivity

In our view, it would be necessary for the Group to proceed with a view to reaching a concrete consensus in respect of time-limit and degressivity of safeguard measures, reflecting the fact that safeguard measures are in essence temporary relief to an industry, and the essential need to keep to the minimum the adverse effects of these measures on exporting countries.

(4) Multilateral surveillance mechanism

(a) As stated above (cf.2(2)), an agreement in such form as an international code on safeguard measures should be reached in order to secure rational administration of safeguard measures. In addition, it is also necessary, in our view, to establish a mechanism which would put these measures under multilateral surveillance so that transparency of the measures is secured and proper administration of such an international agreement is guaranteed.

(b) With respect to such questions as the composition or nature of the multilateral surveillance mechanism, the Group should address itself to these questions as the work goes on, taking into account as appropriate cases of other existing surveillance bodies.

(5) Criteria for invocation of safeguard measures

As to the criteria for invocation of safeguard measures, it has been widely recognized through discussions on a number of occasions that it would be difficult to specify such criteria in objective quantitative terms. The Japanese delegation holds the view that it is not necessarily a realistic approach to try to define in these terms the criteria referred to in Article XIX:1(a) and that it would be more realistic to examine the elements that should be taken into account in determining the existence of serious injury, referring as appropriate to such provisions as Article 3 of the Anti-Dumping Code.

(6) Level of import restrictions

In the light of the essential objective of meeting difficulties in importing countries, safeguard measures should be contained to such a scale and extent judged to be reasonable. The Japanese delegation, deems it desirable to examine the introduction of some general rules or principles to prevent excessive import restrictive measures.

(7) Notifications

Safeguard measures are in principle required to be notified prior to their introduction but in practice ex post facto notifications have come to be more customary. In our view, it is necessary to establish a system whereby obligations under Article XIX are fully observed in its actual application.

It is also our view that the notification should be made not only on the contents of the measure in question but should also contain relevant information that should enable other countries concerned to fully evaluate the trade effects of the measure in question.

At present, there are cases where there are insufficient follow-ups in GATT on the measures after their invocation. The introduction of periodical reporting requirements could thus be usefully examined in parallel with the consideration of the surveillance system mentioned above (cf.(4)).

(8) Domestic procedures

Once a guideline is agreed upon with respect to the use of Article XIX, domestic procedures, under which to take measures along the guideline, could be left to the discretion of the countries concerned, in view of the differences among countries of their judicial and administrative structures.

An approach calling for uniformity in public procedures in respect of the application of safeguard measures on the part of contracting parties would not be realistic.

(9) Treatment of bilateral safeguards

As long as appropriate administration of Article XIX is secured, the need to resort to bilateral safeguard arrangements outside the framework of the GATT should decrease.

The Group should confirm that the bilateral safeguard arrangements which are now in force and not in conformity with the multilateral safeguard system be phased out as soon as possible. It would also be useful to undertake a review of the progress of such phase outs after a certain fixed period of time.

(10) Industrial adjustments

In view of the basic purpose of safeguard measures under Article XIX, i.e. granting temporary relief to a domestic industry, it would be inappropriate to deny forthwith the idea that domestic adjustment efforts are necessary. The Japanese delegation is of the view, however, that because of the differences among countries of social and economic situations as well as in policy requirements, it is not appropriate to make governmental adjustment actions obligatory in the invocation of safeguard measures.