

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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NOTE BY THE UNITED STATES ON DOMESTIC PROCEDURES

The United States Government considers agreement on certain domestic procedural requirements in the determination of import relief essential for the effective and equitable operation of an improved multilateral safeguards system. In this regard, the United States would like to elaborate on its proposal contained in paragraph 4 of MTN/SG/W/11 to stimulate further discussion of this issue.

Our basic concern is that there be an institutional basis in each signatory that assures the equitable application of the improved guidelines and conditions envisaged for the improved safeguard system. This does not mean that there need be identical national bodies that follow identical procedures, but rather that there be appropriate designated national bodies which allow sufficient transparency in their deliberations to help ensure that a signatory's obligations and the rights of other signatories are guaranteed.

For this purpose, we believe that internationally agreed guidelines with the following requirements for domestic procedures are essential:

- (1) The examination of each request for import relief by a specified body, pursuant to established procedures.
- (2) Adequate notice of the initiation of such an examination and the opportunity, including through public hearings, for all interested parties to present views and relevant evidence in order to facilitate the development of the fullest possible information upon which to judge the need for import relief.
- (3) A published report of the determination in each case, including the factors considered and rationale used in arriving at the decision.

The provision of guidelines for domestic procedures is not without precedent in international agreements. Standards for taking domestic actions are found in several provisions of the GATT, in other existing international agreements, and in some other negotiating proposals in the MTN. In particular, Article X of the GATT deals with "uniform, impartial, and reasonable" administration of the laws, regulations, decisions and rulings of contracting parties; prompt publication of trade regulations, restrictions, and bilateral agreements; domestic appeal procedures; etc. The provisions of Article XIX itself require consultations with substantially interested parties be offered before a proposed action is implemented so that foreign interests may be considered in the domestic decision-making process. As another example, the Anti-Dumping Code requires that governments provide all interested parties the opportunity to present evidence and defend their interests during the course of the domestic investigation, and sets standards for both the conduct of investigations and subsequent report and explanation of the administration of domestic laws and regulations in this area. The United States safeguards proposal does not call for the adoption of uniform procedures in the sense of identical institutional mechanisms, but rather for common guidelines on the open and equitable administrative determination of safeguard measures and the prompt and full report thereof.

Several delegations have stated the need for greater precision in the definition of serious injury than now exists in Article XIX. Whatever the eventual approach taken to serious injury, be it the current Article XIX approach or some other formulation, established and open domestic procedures would be extremely useful in helping assure that those Code requirements were being followed in the national decision making process. Reports of such deliberations would provide a public record of the basis for the imposition of safeguard measures and would also be very useful in consultations and for any subsequent review of safeguard measures by national or international bodies as part of the multilateral surveillance process.

Open domestic procedures should be especially helpful to developing countries. They would serve to guarantee an appropriate framework for all affected parties, large or small, to present cases and have their interests considered in the decision making process. The requirement for a subsequent report would also help ensure that all the provisions of the Code, including those providing special and differentiated treatment where feasible and appropriate, were taken into account in formulating a prospective remedy for domestic industry.

We do not believe open domestic procedures and published reports are likely to increase pressure to impose safeguard actions in any significant way, since in any given case, the fact that consideration of a potential safeguard action has been initiated is rarely an unknown matter to the directly affected parties; thus pressures will exist whether procedures are open or closed. However, the more

complete exposition of the facts pertaining to a case that would be developed under open domestic procedures would help ensure that only necessary safeguard actions are taken. We recognize some presentations and evaluations need to be made in confidence. This need not be done, however, so as to deprive importing and exporting interests of the opportunity to make their case to decision making authorities, nor to frustrate subsequent public and international understanding of the compelling factors which required action.