

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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Multilateral Trade Negotiations
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UNITED STATES STATEMENT ON 4 MAY 1977
ON DOMESTIC PROCEDURES IN SAFEGUARDS

The paper tabled by my Government at the beginning of last week (MTN/SG/W/28) is intended to put into more concrete form the proposal contained in the fourth element of the comprehensive United States proposal introduced last July in this Group (MTN/SG/W/11). We believe our new paper takes into account some of the comments we have heard from other delegations since that time.

It is our view that in any improved multilateral safeguards system, there should be internationally agreed guidelines requiring at least the following domestic procedural elements for taking safeguard action:

1. The examination by a specified body of each request for import relief, 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 the rationale used in arriving at the decision.

I would like to summarize what we see as the main benefits of this proposal:

First, we believe these procedural elements would help to improve the linkage between domestic decision-making and the requirements of international obligations. They would increase the ability of foreign governments to satisfy themselves that agreed international standards are in fact being applied to the domestic request for a safeguard measure, in the course of the actual decision, and are not simply adduced in the course of an ex post effort at the international level to justify an action already taken. We think such assurances of performance under a safeguards agreement are appropriate, just as we understand other governments believe should be the case under other existing or potential agreements.

Second, we would stress the added assurance of equity for all parties adhering to the safeguards system. The affected interests in any particular action would be guaranteed their "day in court", and governments could have greater confidence that improved safeguard obligations are being applied on a reasonably comparable basis from case to case and country to country. By reaching agreement on guidelines for domestic procedures, governments would help to make clear that they are committing themselves to take into account all legitimate interests, foreign and domestic, affected by a potential safeguard action, and that the decision can be examined subsequently on the basis of a written record of facts considered and judgments made.

Third, our proposed elements would generate a full factual record of the circumstances surrounding most proposed safeguard actions, whether adopted or not. That result would serve a number of useful purposes, not the least of which would be increased understanding among governments of the situations in which safeguard action is or is not internationally acceptable, with added confidence that they could make that judgment with some certainty in future cases of requested import relief.

Fourth, our proposed procedural elements would be supportive of the notification/consultation process we would expect to see strengthened under an improved safeguard system. It would ensure the possibility of the prior notification now required by Article XIX and increase the possibility for useful prior consultations. Whatever subsequent multilateral review is necessary or appropriate for a particular action would also be facilitated by the record created during the operation of those domestic procedures.

In short, if there is to be an international agreement on safeguards, it ought to guarantee that the additional substantive requirements are adequately reflected in each government's future approach to its domestic decisions on safeguard actions.

We have stated in our note, and I would again emphasize, that we are not making a proposal here for identical institutional mechanisms in all those governments which decide to join a safeguards agreement. We think there is plenty of room for variety in terms of specific institutional responses. In that regard, we are encouraged by a review we have made of the various national institutional and administrative approaches reported in the questionnaire exercise which began the work of this Group in 1975. These were summarized in MTN/SG/W/1. We find that of twenty-one respondents (besides the United States) reported in that note, at least eight already had a specified body to examine at least some requests for import relief; four respondents provided the specific possibility of public procedures; at least five specified that there be opportunity to submit evidence

during consideration of a safeguard request; and eleven had at least administrative procedures specified for the handling of such requests. Only four specifically noted the absence of any established procedures for the handling of safeguard actions. We understand that some governments have even decided in recent months to encourage petitioners for safeguard action to make use of designated government bodies and specified procedures, where those exist for various kinds of import relief action, in lieu of handling requests for safeguards more routinely on purely an administrative or in camera basis.

In general, we would urge delegations to note carefully what we are proposing in this paper and, by implication, what we are not proposing. We do not think that some domestic procedural guidelines in an international safeguard agreement would work all that great a hardship on participating governments, and, to the contrary, we think they would increase the credibility and overall durability of that agreement. We suggest that delegations consider these proposals in terms of what would be required of them, which is not all that much, and what they would gain, which in our view is substantial in terms of the institutional assurance that norms and standards negotiated in the international agreement will be tied into internal decision-making on safeguard actions. Without that assurance, our work here will be incomplete and, in our view, inadequate.