

GENERAL AGREEMENT ON TARIFFS AND TRADE

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COMMITTEE ON SAFEGUARDS

Minutes of the Meeting of 15 April 1981

Chairman: Mr. A. Dunkel

1. The Committee on Safeguards held its third meeting on 15 April 1981. The Chairman, recalling the terms of reference of the Committee set out in L/4898, pointed out that at its second meeting in October last year the Committee had noted that, while discussions and consultations were still going on, all delegations remained committed to seeking early agreement in this matter. It was also agreed that at the present meeting there should be a substantive review of the situation and of the progress made. He had understood that further informal consultations had been held among delegations since the last meeting and he suggested that the present meeting should provide the opportunity for delegations to express views in the light of any consultations in which they might have participated or to provide an assessment of the overall situation on safeguards as they saw it.
2. The representative of Yugoslavia stated that in his view not much had emerged so far from the informal consultations. General stagnation seemed to prevail in the work on the safeguards issue and no positive use had been made so far of the Committee on Safeguards. There also seemed to exist a certain lack of political will. It was important to overcome this impasse and engage in discussions of substance. Due to the complexity of the problem intensive efforts and considerable time were needed in order to achieve results. A paper should be prepared as a basis for future discussions. These discussions should take place in the Committee on Safeguards.
3. The representative of Japan, referring to the objectives stated in the Tokyo Declaration on safeguards, stressed the importance his country attached to this question. Japan had participated actively in the MTN negotiations on safeguards as well as in the ensuing informal consultations and was prepared to continue efforts to reach a solution. Japan's basic position, as far as the substance was concerned, had not changed fundamentally since the MTN. In the Japanese view Article XIX as it stands represented an essentially balanced set of provisions including the principle of non-discrimination which should be maintained. Work in this area should be concentrated mainly on the clarification and elaboration of rules and procedures, in the context of Article XIX, relating to modalities for the application of safeguard measures, to their duration, to compensation, to counter-measures and to a surveillance system. Such work should be based on what was achieved with respect to these elements in the MTN.

4. The spokesman for the EEC conceded that the informal consultations had not yielded the hoped-for results but in his view they had been necessary to create an environment conducive to greater flexibility of positions on the issue than had been the case since the failure in July 1979. It would seem necessary, however, to introduce a higher degree of transparency in the informal talks.

5. The representative of India thought that the negotiations on safeguards had been rather fruitless so far. The developing countries had participated very actively in all efforts to achieve a more efficient multilaterally-agreed safeguard system with increased disciplines, objective criteria and improved surveillance. One reason for the limited participation of developing countries in the agreements resulting from the MTN was the negative outcome on the safeguards issue. No progress had been made in this regard since the end of the MTN. Priority should be attached to the search for an elaborate safeguard system. Despite the apparent lack of political will at present it would be useful to set some time-frame in order to achieve progress.

6. The representative of Argentina said that there were two aspects to be considered: the first for the short term, and the second how to carry forward the Committee's work. With respect to the first, transparency would have to be assured in the Article XIX procedures, and concerning the second, efforts should be speeded up to establish a Code on Safeguards affording concrete guarantees and stability in a non-discriminatory framework. Lastly, a time-frame should be established so that any progress could be reported to the CONTRACTING PARTIES at their November session.

7. The representative of Brazil was of the opinion that the informal consultations had been very useful and had produced important results. A certain change of positions had been noted. There seemed to be now a certain flexibility and a feeling of urgency. The time might have come to treat the safeguards issue in a more formal way, possibly by trying to reach positive results in the framework of the Committee on Safeguards.

8. The representative of Pakistan thought that there was need for a sense of urgency in this field. Referring to the objectives on safeguards stated in the Tokyo Declaration, he found that no progress had been made so far and there was on the contrary a danger of going backwards. The search for an open and equitable safeguards system based on the principle of non-discrimination as laid down in Article XIX should be continued.

9. The representative of Korea regretted the lack of progress so far. In his view strict criteria, discipline and surveillance should be the key elements of a provision on safeguards.

10. The representative of Romania underlined the urgency of arriving at a solution on safeguards. He considered informal talks useful for seeking a compromise but there should be wider participation of delegations. The official GATT mechanisms should be used to the maximum extent possible.
11. The representative of Hungary indicated that the position of the Hungarian authorities remained unchanged. As regards the present stage, only interim conclusions on procedural matters were possible. These could not imply any changes in the existing rights and obligations. Since the outlook for world trade was at present not too encouraging it was all the more important to adhere to the GATT provisions and procedures. One should try to adopt supplementary rules and procedures in order to increase discipline in the safeguards field and to exclude arbitrary actions. This was of considerable importance, in particular for smaller countries. More transparency was needed in the consultations on this issue.
12. The representative of the United Kingdom, speaking for Hong Kong, reaffirmed the position of his delegation on the non-discriminatory application of Article XIX. In order to achieve progress in the safeguards field a clear political will was needed. This seemed lacking at the present time on the part of certain major participants.
13. The representative of Finland, speaking for the Nordic countries affirmed that there existed the political will on the part of his group of countries to arrive at a comprehensive and balanced solution on safeguards. If that was not feasible at present, an effort should be made to find a solution on a less ambitious level in the months ahead. Intensive discussions should be taken up soon after Easter in order to advance in the matter before the summer recess and to define a realistic level of ambition.
14. The representative of Czechoslovakia expressed regret and concern about the lack of progress. It was necessary to maintain the non-discriminatory application of safeguards provisions. This did not mean that the present system should not be improved, in particular as far as the criteria for the application of safeguards and surveillance were concerned. The consultation process should, however, be more transparent and countries representing all important trade flows should be able to participate.
15. The representative of Switzerland shared the concern of other countries concerning the lack of progress in the safeguards field. He stressed the urgency of finding a solution but was aware of the fact that at present an ideal solution, meaning a code on safeguards defining the modalities and criteria of application of safeguard provisions and establishing an equality of rights and obligations as well as multilateral control, was out of reach. Efforts to find a solution should, however, continue. The CONTRACTING PARTIES had to act in order to restore their credibility in this matter. This was particularly important in the present circumstances of economic uncertainty.

A step-by-step approach should not be excluded. Some kind of initial agreement was needed in order to counter-balance the negative impression created by the failure to achieve results in the MTN and subsequently.

16. The spokesman for the EEC stated that the Community and all its member States had a strong political will to arrive at a safeguards solution which would constitute the safety valve essential for maintaining an open world trading system. The Communities were prepared to participate in any discussions and negotiations to that end. The major problem was that Article XIX was outdated since economic realities had changed considerably over the past thirty years. The safeguards system had to be modernized and adapted to present circumstances. The EEC as a major importer and exporter of goods needed a secure and effective safeguards system. The methods used in seeking a solution may not have been wholly satisfactory. Nevertheless, the informal talks had been very useful and some flexibility had emerged on certain aspects. More transparency was needed, however, in order to show the outside world in a positive way that GATT was being active in that field. Up to now, it had not been possible to make more progress because there had not been enough time for the major elements of a new safeguards solution to reach fruition. In any case, the work done had shown the need to set more modest objectives. From the EEC viewpoint, any solution would have to be balanced and based on the three principles of security, equity and efficiency from the point of view of both importers and exporters. The EEC did not consider it useful always to set new time-limits for finding a solution, since these might always be exceeded with the risk of bringing GATT credibility into question.

17. The representative of Australia stated that it was important to have an equitable set of rules and equitable treatment of all safeguard measures. Australia had often pointed out that Article XIX measures were already subject to a level of obligations which was not applied to other safeguard measures, such as those permitted under the GATT subject to certain conditions being met, those covered by special GATT waivers and those which are not provided for in the General Agreement. Thus any increase in obligations on Article XIX measures while leaving other safeguard measures aside would only increase the inequity of the current situation. It would also have as a consequence that countries presently using Article XIX would in future be forced to take such actions outside the GATT, and thus outside the framework of obligations and transparency which result from actions taken pursuant to the General Agreement. Australia was prepared to join in the search for an equitable solution.

18. The Chairman stated that the safeguards issue was one of the problems that could put into question the credibility of GATT. The negative outcome affected other fields where solutions had been found in the MTN. In the present difficult economic circumstances Article XIX provided a major safety valve. It was important to find a way out of the present impasse. It was the general feeling that the informal discussions had been useful since they had permitted a certain flexibility. On the other hand it was necessary to find a more structured approach. It was his intention to try to find, in consultation with delegations, a solution which should comprise the maximum that was realistically possible in the given circumstances and which, even if it fell short of an ideal arrangement, would help to put international trade on a more solid and secure basis. As a first step in this direction, the Chairman presented the following conclusions to the Committee for adoption:

"Following discussions in terms of the mandate given to it by the CONTRACTING PARTIES by virtue of their Decision of 28 November 1979, the Committee on Safeguards has at this stage of its work come to the following conclusions:

- "1. The provisions of Article XIX of the General Agreement continue to apply fully and at the present time the rules and procedures for their application remain unchanged.
- "2. The CONTRACTING PARTIES will continue to keep the matter under examination and discussion and to this end the Committee on Safeguards will expedite its work.
- "3. All actions taken under Article XIX, and to the extent possible, other actions which serve the same purpose will be notified to the CONTRACTING PARTIES. In addition, it will be open to contracting parties to bring up any matter in accordance with the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance."

With regard to the first point the Chairman stated that the "rules and procedures" mentioned were the ones referred to in the terms of reference of the Committee on Safeguards.

19. The representative of Japan stated, that while his delegation was prepared to join in a consensus and to accept the Chairman's proposal for conclusions as stating the present state of affairs, he was under instruction to make the following comments: with respect to paragraph 1 of the proposed conclusions it was his understanding that this paragraph was in the

nature of a recognition that the principle of non-discrimination continued to be adhered to in the application of Article XIX. With respect to paragraph 3 it was his understanding that this paragraph was in the nature of a confirmation of the relevant parts of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance.

20. The representative of the United States confirmed that his government continued to support efforts to reach agreement for an improved safeguards system. He put the following questions with regard to the proposed conclusions: would the Committee on Safeguards continue to exist and would it be available for use when necessary? Could third countries notify, under paragraph 3 of the conclusions, actions they believed other countries had taken and not notified? Could these notifications then be submitted to and be discussed by the Committee on Safeguards?

21. The Chairman replied with regard to the first question that the Committee on Safeguards would continue to exist for the purpose for which it had been set up. Regarding the second question he replied that such notifications could be made, subject to the following clarifications: the third country would first have to ask for information on a bilateral basis; it could then circulate a note referring to the measure in question and stating its intention to enter into consultation with the country in question. As to the third question, his interpretation was that such notifications would at the present time have to be dealt with in accordance with normal GATT provisions, i.e. the procedures foreseen in Articles XXII and XXIII, this meant that basically the reply to this question was in the negative.

22. The representative of India stated that his understanding of paragraph 1 of the proposed conclusions was that there would be no unilateral changes in the agreed rules, procedures and modalities of application of Article XIX and particularly the principle of non-discrimination.

23. The representative of Japan referring to the second question put by the United States delegation and the reply given by the Chairman, considered it in accordance with the provisions of Article XXII and the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance that information could be requested by third countries from a country taking a safeguards measure. He did not, however, see any basis, in the GATT or elsewhere, for a notification of such a measure by a third country to the GATT and for a discussion of such a notification in the Committee on Safeguards under its present terms of reference. He reserved his position in this regard. In his view, the only basis for bringing such matters into the GATT could be found in paragraph 2 of Article XXII.

24. The representative of Finland, speaking for the Nordic countries, stated that he could accept the conclusions of the Safeguard Committee as proposed, i.e. without any interpretations, additions or understandings.

25. The representative of the United States expressed disappointment at the rather modest content of the proposed conclusions and disagreed with the Japanese interpretation of the rights of contracting parties under the General Agreement. He referred to the unsatisfactory situation which prevailed at present with regard to Article XIX. GATT was supposed to be a pragmatic organization. Therefore, one had to recognize that there existed safeguard actions which were not covered by Article XIX. This could not be denied without casting doubts on the credibility of the GATT. Countries relying on Article XIX in order to cope with certain difficulties in their trade voluntarily subjected themselves to the GATT disciplines, while other countries not using Article XIX remained outside those disciplines. The United States supported greater transparency not only in negotiations but also in actions including safeguard actions. If the proposed conclusions were to be adopted the United States expected that serious discussions on safeguards would commence already in May. The United States intended to participate actively in any new efforts and would make their own proposals on a priority basis as regards certain aspects of paragraph 3 of the proposed conclusions. These conclusions could be accepted by his delegation only with great reluctance and only under the condition that no interpretations were attached to them and that strong new efforts were made under the guidance of the Director-General to restart the negotiations on safeguards.

26. The representative of Canada stated that his delegation was prepared to join any consensus to adopt the conclusions as proposed, i.e. without any interpretation or reservation. In particular, the Japanese interpretation regarding the rights of contracting parties to make notifications under Article XXII could not be accepted. His delegation reserved the possibility of making such notifications consistently with its rights and obligations under the GATT and the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance and of having these followed up as may be decided by the appropriate GATT bodies.

27. The representative of Australia stated that he could not share the interpretation given by the Japanese delegation as regards the rights of contracting parties under Article XXII of the GATT. In his view, such interpretation was contrary to established procedures, to the provisions of the General Agreement, and to the Understanding Regarding Notifications, Consultation, Dispute Settlement and Surveillance.

28. The Chairman underlined that the conclusions proposed by him should not be considered as involving questions of legal interpretation such as for instance was the case with the MTN Codes. It was not the task of the Committee on Safeguards to engage in an interpretation of the General Agreement. The conclusions would not affect in any way the rights and obligations of contracting parties under the General Agreement. He pointed also to the fact that so far no discussion of substance on disputed issues had taken place in the Committee. He hoped that such a discussion would be possible very soon on the basis of proposals from various delegations.

29. The Committee adopted the conclusions as proposed.

30. The spokesman for the EEC stated that failing a more ambitious consensus, the conclusions adopted by the Committee represented certain progress in his view. They left open all possibilities of finding a balanced solution to the safeguards problems that might be satisfactory to all contracting parties. He regretted the fact that certain differences of view had emerged, mainly among the industrialized countries. In his view, paragraph 1 of the conclusions was general enough to cover also the agricultural sector and did not place contracting parties on the same footing of equality in the agricultural sector because of differing situations resulting from the veritable "privileges" enjoyed by several contracting parties. He pointed out that the reference in paragraph 3 of the conclusions to other actions not falling under Article XIX should be regarded as an advance concession on the part of certain delegations, including in particular his own. The Community would take that concession into account in the context of the final package when the time was ripe for a solution on safeguards. He reaffirmed the political will of the EEC to participate in the search for a balanced and satisfactory solution to the safeguards problem.