

GENERAL AGREEMENT ON TARIFFS AND TRADE

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COMMITTEE ON SAFEGUARDS

Minutes of the Meeting on 13 July 1982

Chairman: Mr. A. Dunkel

1. The Committee on Safeguards held its sixth meeting on 13 July 1982. The Chairman noted that there was a growing consensus that a Decision by Ministers should cover at least the main objectives and principles of an understanding on safeguards. Since the last meeting of the Committee informal consultations had been held among interested delegations which would be continued and intensified. He recalled the agreement reached at the last meeting that the list of safeguard measures contained in Spec(82)18/Rev.1 would be revised in order to improve the information and to identify all countries involved in arrangements listed in Annexes B and C unless contracting parties communicated their objections to the secretariat. Very little new information had, however, been provided and there still existed some uncertainty as regards the identification of countries. It had therefore not been considered useful at this stage to re-issue the document.
2. The representative of India, referring to Spec(82)18/Rev.1, stated that the list should also include restrictive measures in the textile field as well as residual restrictions, it being understood, however, that the inclusion of measures in the document did not imply any legal commitment for the parties concerned nor provided any ground for the measures being accepted as legal in the GATT. As regards a solution to the safeguards problem, the delegate of India stated that the main objective should be an improvement in the operation of Article XIX. Safeguard measures should remain exceptions in international trade. A new safeguard solution should therefore make the resort to safeguard actions more difficult and improve objectivity and reduce subjectivity. There was a need for greater transparency and efficiency and for multilateral institutions with a surveillance rôle. It was very important, in particular for weaker trading partners, that the new system established a balance of rights and obligations and worked as a self-correcting mechanism in case this balance was upset. The essential elements of a new system should include objective criteria for the determination of serious injury, the geographical coverage of the measures, the coverage of the measures, and surveillance and multilateral discipline. As regards the geographical coverage, i.e. selectivity, it was necessary to keep in mind that this was only one among many important elements which had to be discussed.
3. The representative of the Philippines speaking for the ASEAN countries said that since the conclusion of the MTN there had been a proliferation of measures of a selective and discriminatory nature. In the view of the ASEAN countries all measures with a safeguard effect should be placed under a common GATT discipline and applied on an m.f.n. basis. The Ministerial Meeting should take a decision on the following basic elements of a comprehensive agreement on a safeguard system which

could be elaborated in more detail thereafter: all measures with a safeguard effect should be put under the disciplines of Article XIX after an appropriate phase-out period; clear determination of serious injury and threat thereof; avoidance of discrimination against imports enjoying comparative price advantage; a commitment by a country taking a safeguard action to adopt domestic policy measures to remedy and relieve the situation which gave rise to the safeguard action; introduction of time-limits for safeguard actions; establishment of a surveillance body to monitor compliance with all the provisions of a strengthened Article XIX; special and differential treatment for developing countries; the right of developing countries to seek compensation for the adverse effects of safeguard actions.

4. The representative of Turkey stated that the safeguard problem should be one of the priority issues to be tackled at the Ministerial Meeting. Ministers should be in a position to adopt at least the basic principles of a new safeguard system and provide guidelines for further negotiations. He considered the proposal made by Australia at the last meeting as a positive initiative and supported the idea that a future safeguard solution should be adopted by consensus. He also expressed the view that safeguard measures should be temporary and exceptional and subject to clear and objective disciplines. It was important to have precise criteria for injury and threat thereof.

5. The representative of Finland speaking for the Nordic countries said that although a considerable negotiating effort would be necessary during the autumn, the basis of a possible safeguard agreement seemed to be emerging from the discussions that had taken place. No major disagreement seemed to exist on a number of principles and objectives of an acceptable safeguard agreement, e.g. the temporary and exceptional nature of safeguard action, the need to define adequately the conditions and modalities of such action, the need for maximum transparency with regard to all measures and the need for equity and efficiency of the system. It was also widely recognized that safeguard measures should be commensurate to the injury or threat thereof, and that their distorting effects on trade should be minimized. The possible modalities of safeguard actions should not be approached dogmatically and the forms and modalities of such actions should be considered with an open mind. As regards increased transparency, the Nordic countries had noted with satisfaction that in the last few months there had been positive movements on the part of a number of delegations. The Nordic countries were of the view that measures taken outside Article XIX should be brought under some kind of GATT discipline. The documentation prepared by the secretariat was very useful and should be kept up-to-date. Referring to the proposal made by Australia, the Nordic spokesman stated that some of the solutions proposed were similar to the ideas advanced by the Nordic countries. It was, however, difficult to see how the exclusion of actions in the tariff field could lead to a balanced solution. It would also be important to know what precise coverage of actions the Australian delegation had in mind.

6. The representative of the United Kingdom speaking for Hong Kong referred to the proliferation of illegal safeguard measures not justified under Article XIX, the inclusion of which would seriously

undermine the GATT system. These measures, including the so-called "grey area" measures, should continue to be prohibited under Article XI. The present unsatisfactory situation should be remedied, and Article XIX strengthened in the following manner: all existing measures having a safeguard effect should either be justified, or modified to conform to the provisions of Article XIX, or terminated forthwith; no new measures having a safeguard effect should be introduced unless they were in full conformity with the provisions of Article XIX; the application of this Article should continue to be based on the principle of non-discrimination set out in Articles I and XIII; objective criteria should be established to determine "serious injury" under Article XIX; quantitative restrictions established under this provision should not involve any cutbacks below the highest import level achieved in a reference period to be agreed; the initial period of such restrictions should be no more than one year and any proposals for extension should be subject to multilateral examination and approval, having regard to the objective criteria for serious injury mentioned above; even if justified, any extension should be approved only on condition that it was accompanied by a progressive liberalization through substantial annual growth.

7. The same representative also stated that Hong Kong did not challenge the legality under the GATT of Australia's tariff quotas on clothing imports. These quotas did, however, have the same effect as quantitative restrictions which was recognized in Article XIII of the GATT. If Australia wanted to examine and include under the GATT all measures having a safeguard effect, including the so-called "grey area" measures, Hong Kong would have to insist that Australia's tariff quotas be subjected to the same notification, justification, examination and discipline.

8. The representative of Chile said that it was important to find a balanced solution to the safeguard problem. In his view there should be a basic understanding that safeguard measures should be temporary and exceptional and should be taken only in accordance with the m.f.n. principle. He considered furthermore the Australian proposal a good basis for further work in this area.

9. The representative of Spain stressed the need to find a balance between rights and obligations in the field of safeguards. Safeguard measures should be taken only on a temporary basis. Notification, consultation and surveillance procedures which were contained in Article XIX needed to be applied more strictly in order to be effective. It was therefore important to find a flexible framework for the improvement and better application of this Article. Safeguard actions were the last resort for protection and countries which could resort to other provisions of the General Agreement (Articles XII, XVIII, increase of unbound tariffs) should do so. Therefore, countries which had assumed more commitments in GATT had to resort more to safeguard action under Article XIX.

10. The representative of Japan welcomed the progress made in the discussions on the safeguards. This momentum should be maintained and further strengthened so that the Ministerial Meeting could achieve a

comprehensive solution which should be the final one or at least one which assured a final solution; Japan could not accept a so called "interim approach". The solution should cover all measures with a safeguard effect including those taken under Article XIX and others in the "grey area". It should apply to all contracting parties and should therefore take the form of a decision by the CONTRACTING PARTIES. The solution should furthermore be in accordance with the major GATT principles, i.e. allow an expansion of free trade. All measures should be temporary and exceptional and should under no circumstances be abused. This meant that the requirements and conditions for the invocation of safeguard measures had to be carefully considered. In the Japanese view at least the following elements had to be included in the new safeguard mechanism: equity between exporting and importing countries, prior notification, limited duration of the measures, degressivity, measures to be commensurate with the serious injury or threat thereof, and the basic right of compensation and retaliation. In addition, matters related to structural adjustment deserved careful consideration. The principle of non-discrimination prescribed in Article I which had been the established practice in the application of Article XIX should be observed. In this respect the problem of selectivity should be seriously considered since it was a matter which implied a derogation from the fundamental principles of GATT and affected the interests of all contracting parties. Under no circumstances would Japan accept a unilateral application of selective safeguard measures. The function of a safeguard committee which must be established and the dispute settlement mechanism were important components of an equitable safeguard mechanism. The central rôle of the safeguard committee should be to ensure effective surveillance. For this purpose it was important to secure utmost transparency and to establish criteria for effective surveillance and an appropriate procedure for the committee to make recommendations. As regards the dispute settlement mechanism, recourse to Article XXII and XXIII should be maintained and clear reference should be made to this effect. Japan considered that the proposal put forward by Australia was a positive one and would study it in detail.

11. The spokesman for the EEC said that his delegation regarded the initiative relating to greater transparency as one of the main elements arising from the work on safeguards. It was important to analyze carefully the measures listed in Spec(82)18/Rev.1 in order to be able to assess the present situation and the reasons behind each of the actions. In this context it was a must to identify the countries taking these actions. His delegation regretted that in this respect some difficulties still existed on the part of some contracting parties. The EC were fully prepared to participate in work on the grey-area measures.

12. The representative of Canada stated that the new safeguard solution should be contained in a decision by the CONTRACTING PARTIES. The new system should assure that there was adequate discipline, that measures taken were temporary and degressive and responded only to an emergency situation which required short-term solutions. It should also provide an adequate framework for governments to resist protectionist pressures. In order to achieve greater transparency it was necessary to carry out a careful analysis of "grey area" measures. As regards the question of

selectivity, Canada was of the view that normally safeguard measures should remain on an m.f.n. basis but it could under certain agreed conditions and criteria accept a degree of selectivity. Any new solution should be comprehensive and worked out in one single step without an interim phase.

13. The representative of Argentina supported the views expressed by the representative of India and Hong Kong. As concerns the scope of a future safeguard solution he was of the view that only measures under Article XIX should be covered. Other actions should be included only for the purpose of setting a time period for their elimination. It was important to establish a proper balance of all elements of a new safeguard system, especially by taking into account the interests of the developing countries.

14. The representative of Brazil stated that when examining the question of safeguards, it was important to consider why certain actions had been taken under Article XIX whereas others had taken different forms, e.g. VERA and OMA. This was usually analysed only from the optics of importing countries whereas his delegation considered that the fundamental question was on the exporters' side, i.e. on the precise understanding of the reasons why exporters accepted restraints of an informal nature although they had the protection of the rules and procedures of Article XIX. In his view one of the main reasons why exporters had accepted informal restraint agreements was the serious asymmetry in trading power which existed between different countries. This imbalance was made more serious when the exporting side was a developing country. The present disciplines of Article XIX did not contemplate or compensate for these facts, as the weaker trading partner could not make use of the possibilities of retaliation or compensation. Consequently it had no other alternative but to face a unilateral safeguard action or accept an informal restraint arrangement. Any new safeguard rules, besides taking account of this fundamental fact in world trade relations, should not create greater incentives for more trade restraints and should avoid to create a basis of legitimacy which would tend to increase the number of safeguard actions, both under Article XIX or otherwise. Finally, his delegation considered it appropriate that any new safeguard rules should be accepted, applied and interpreted in the same way by all contracting parties.

15. The representative of Australia, referring to the comments made on the proposal put forward by his delegation, recalled that the granting of protection by means of tariff rather than non-tariff measures was a basic principle of the GATT, as contained in Article XI:1. Such protection was only proscribed when a tariff increase breached a binding. The question of balance or equity in respect of non-bound tariffs was a matter for reciprocity in trade negotiations rather than for a safeguards agreement. Hence, the inclusion of tariff actions on unbound duties in a new safeguard solution would mean that additional obligations would be created for measures which the GATT recognized as the only legal means of affording protection. As to the comments made by several delegations that they regarded the Australian proposal as leaving many important aspects for subsequent resolution after the Ministerial Meeting, he felt that a major obstacle would be overcome if,

in the short term, agreement were to be reached on the fundamental governing principles on which a safeguards agreement should be based. He emphasized that most delegations accepted a solution to the safeguard problem as being one of the key elements to the success of the Ministerial Meeting. He shared that view, though he was concerned that there were, for the moment, too many expressions of willingness to progress work in this area being accompanied by too few actions which might give meaning to such expressions.

16. The representative of New Zealand stated that it was important to achieve a balance between the right of protection for a domestic industry and security of access to markets. The Australian proposal to a certain extent covered these aspects. For his delegation as for others it was however important to know what the initial commitments were before taking further steps in the direction of a safeguard solution which had to be seen as comprising rights and obligations.

17. The representative of Switzerland, commenting on the Australian proposal, said that he did not favour the idea of leaving the negotiations on safeguards until after the Ministerial Meeting. In his view the Australian proposal dealt mainly with procedural aspects of the problem rather than with the substance of rules and disciplines. As to the safeguard question in general, he shared the view of other delegates that a definition of injury was needed. At the same time he considered it to a certain extent dangerous to circumscribe the injury concept too strictly, thereby creating a right to protection in a given situation for national industries. In his opinion this could lead to a situation where safeguard measures could be taken automatically if certain conditions were fulfilled. There should also be a clear time limit for the duration of safeguard measures.

18. The representative of Pakistan stated that a new safeguard solution should avoid an erosion of established GATT principles, in particular the m.f.n. principle. In this context he was concerned about the attempts to introduce selectivity into the safeguard system. He supported the idea of greater transparency and a clearer definition of the injury criterion. In connexion with the question of disciplines it was important to find out who most needed security against safeguard measures. In his opinion it was the exporting countries since the present GATT system did not provide sufficient security for them against such measures. This view was amply supported by the available documentation. He considered the Australian proposal a good basis for further work.

19. The representative of Austria, with reference to the Australian proposal, found it difficult to accept the idea that tariff actions should be excluded from a new safeguard solution and that non-tariff measures should generally be replaced by tariff measures. This concept would in his view create advantages for countries with few bindings.

20. The representative of the United States stated that more detailed information should be provided in order to improve the list contained in Spec(82)18/Rev.1. He considered it also essential for further work in

the safeguard field, that countries involved in "grey area" measures should be identified in the next revision of the document.

21. The representative of Romania stressed the need for a clear definition of the criteria for taking safeguard actions.

22. The spokesman for the EEC stated that the Community followed the safeguard negotiations under three aspects, namely as importer, as exporter, and as third country which might be affected by agreements between other contracting parties. The Community accepted the view that safeguard measures should be exceptional, temporary and, under certain conditions, degressive in nature; it was also in favour of the principle of non-discrimination but did not exclude a priori measures of a limited character. He could support to a large extent the elements for a safeguard solution outlined by the Indian representative as a basis for further discussion but expressed doubts whether the injury criterion as laid down in Article XIX could also apply in cases where two parties agreed on a measure in order to prevent such injury. As to Spec(82)18/Rev.1 he wondered whether it might be useful to attempt to draw certain conclusions from the present contents of the document, leaving, however, aside the question of the legal status of the various measures. Referring to the Australian proposal he stated that he could agree with few of the ideas put forward, especially the idea of the adoption of a safeguard solution by consensus. In general, the Community was open minded and prepared to continue the negotiations with a view to finding an equitable solution.

23. The Chairman stated that in order to proceed with the negotiations each participating country should make its interests known as clearly and as early as possible. The secretariat would continue its efforts in the coming weeks, together with delegations, to try to define the basic principles of a future safeguard solution. From the discussions so far it would seem possible to establish a list comprising the main questions to be addressed in a Decision by Ministers. It seemed also clear that Article XIX should remain the basis for further work.