

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

GROUP 3(d) - SAFEGUARDS

Report to the Trade Negotiations Committee

1. In conformity with the decision taken by the Trade Negotiations Committee at its July 1974 meeting, Group 3(d) met on 17 and 18 October 1974, in order to carry out technical and analytical work on the multilateral safeguard system (MTN/P/3 paragraph 26).
2. The view was expressed by some developed countries that it would be difficult to make detailed comments on the existing safeguard provisions or to agree on changes or improvements to the present system before the precise contents of the multilateral trade negotiations were known. Some delegations questioned whether Article XIX, in its present form, was really inadequate, but recognized that there had been certain difficulties in the application of this provision. They felt that it was very difficult at this stage to define the nature of the problems. Nevertheless, they were prepared to enter into a discussion with other delegations in order to clarify the problems and search for possible solutions.
3. Many delegations expressed concern over the lack of international discipline in the area of safeguards and stressed the need for an examination of the present multilateral safeguard system. Maximum trade liberalization could in the view of some delegations only be achieved when a satisfactory safeguard system was available. It would also be an important element for improved management of problems and friction in international trade relations. Many delegations emphasized that such an improved system could only be developed in the multilateral trade negotiations which provided an opportunity for the maximum number of importing and exporting countries to ascertain that their interests were protected. Some delegations stated that existing unilateral and bilateral restrictions whether or not in conformity with international trade rules should be capable of being considered to fall within the ambit of a new international safeguard system.
4. Delegations from developing countries stressed that they attached great importance to the reformulation of present GATT rules in the context of the Multilateral Trade Negotiations and, in this connexion, the question of safeguards should be

accorded high priority. They emphasized that differentiated and more favourable treatment for developing countries was necessary, feasible and appropriate in the field of safeguards. These delegations supported proposals which had been made earlier in the Committee on Trade and Development by the delegations of Brazil and Nigeria (COM.TD/91 and COM.TD/92) and more recently in UNCTAD (TD/B/C.2/L.71). In particular, they underlined that the general rule should be that safeguard measures should not be applied by developed countries to imports from developing countries. Exceptions could be made to this rule only in specific and clearly delineated circumstances, subject to objective criteria and appropriate justification procedures and only after prior consultations had taken place with the affected developing countries and after the safeguard measures had been expressly authorized by an appropriate multilateral body. They also expressed the view that safeguard action should only be taken in a case of proven actual material injury to domestic industry rather than in cases of potential injury. Furthermore, such action should take into account actual material injury to the exporting industries of the developing countries. Until the elaboration of new general rules, they proposed that the developed countries should refrain from using safeguard measures against imports from developing countries.

5. The delegation of a developing country, in giving its support to the proposal to grant differentiated treatment to developing countries applicable in the field of safeguards, requested that particular consideration be given to the situation and requirements of developing countries outside the GATT which are members of economic groupings.

6. There was a wide measure of agreement in the Group that the multilateral safeguard system should cover effectively the entire range of international trade, i.e. industrial and agricultural products. Some delegations recalled their view that any problem arising in the application of safeguard measures in the agricultural sectors should be studied in conjunction with Group 3(e). Some delegations from developed countries stated that the system should bear equally on small, medium and large size countries.

7. Some delegations from the developed countries were of the opinion that the safeguard provisions should be amended so that in future safeguard measures would only be applied to countries whose exports were causing material injury. These delegations felt that the safeguard clause of the Arrangement Regarding International Trade in Textiles provided an interesting precedent for the possibility of a selective approach. Some other delegations from the developed countries, however, said that the principle of non-discrimination in the application of safeguard measures should remain valid and any departure from this principle would necessarily lead to the proliferation of safeguard actions. These delegations reminded the Group that during the negotiations leading to the Arrangement Regarding International Trade in Textiles, it was clearly understood that any solution arrived at in the context of textiles would not prejudice the position of any country in the multilateral trade negotiations.

8. Some delegations pointed out that the international safeguard system should distinguish between measures appropriate to deal with short-term phenomena and measures appropriate to longer run structural problems. In the latter case where structural changes were required, these could be facilitated by adjustment assistance measures. It was, however, for national governments to decide to what degree such measures should be taken.

9. One delegation expressed the view that the new universal safeguard provisions resulting from the multilateral trade negotiations should be based upon the following principles: (a) any safeguard action should be taken only "ex post", namely in cases of evident and proven material injury to the importing country; (b) compensation should be provided for if the safeguard measure is applied on an m.f.n. basis; (c) the criteria for the application of safeguard measures should be non-discriminatory; and (d) prior consultations should be obligatory.

10. Some delegations said that any reform of the multilateral safeguard system should involve the setting up of an international surveillance mechanism based on mutual commitments by both importing and exporting countries. Under such a mechanism, any safeguard action could be subjected to international scrutiny. Should the international community decide that the projected safeguard action was not in fact warranted, the importing country would have to cease application of the measure within a given period of time and in case of refusal to withdraw the measure, the exporting country would be authorized to take retaliatory action. These delegations could not support the idea put forward by other delegations that the decision whether a particular safeguard action was justified rested with the exporting country. It was incumbent on both importing and exporting countries to determine what remedial action should be taken. Some delegations pointed out that not all countries were in agreement on the conditions under which compensation might be sought in these situations.

11. Delegations from developing countries supported the idea of establishing a multilateral surveillance body to supervise the operation of the safeguard system. Such a multilateral surveillance body would, inter alia, be responsible for the establishment of rules and procedures for consultations, the determination of injury, and the application of differentiated treatment to the exports of developing countries. For example, in those cases in which the body could determine that a developing country had not been responsible for the injury, the developed country which applied the safeguard measure should provide more than proportionate compensation to the affected exporting country. They said developed countries should put greater emphasis on re-conversion assistance measures in order to make a resort to safeguard measures unnecessary. However, the aim of this assistance should not be to restore competitiveness to the affected industries but rather to bring about a transfer of resources to more efficient sectors of the economy, thus contributing to a more rational international division of labour.

12. Delegations from developing countries furthermore pointed to the need to elaborate special and more flexible provisions in order to facilitate the application by these countries of safeguard measures in accordance with their particular needs and interest. Other delegations noted that developing countries had in a number of cases in the past resorted to Article XIX, and questioned whether there was any need to facilitate the application by developing countries of such measures.

13. The Group agreed that the two secretariat papers (MTN/3D/1 and MTN/3D/2) provided a useful basis for the examination of safeguards. Some delegations, however, expressed reservations with respect to some of the information in these notes and the appropriateness of the inclusion of certain elements contained therein. Proposals were made to expand some parts of these notes, e.g. the chapter on the Arrangement Regarding International Trade in Textiles.

14. One delegation proposed that the Group, in a first stage of its work, should examine and analyze the present safeguard system based essentially on GATT Article XIX. This examination should focus on the following points:

- what was the present system intended to accomplish;
- how had it operated;
- why had there been such limited application of its provisions;
- why had countries turned to special measures or other GATT Articles to safeguard domestic producers.

After the present system had been analyzed, the Group should explore ways of correcting the problems identified, and go on to develop the elements of an improved system. This might be regarded as the second stage of the Group's work. There was a wide measure of support in the Group for this general approach to the Group's work.

15. The same delegation also proposed that if its general approach was acceptable, the secretariat should establish a survey, similar to the one carried out in 1960 in connexion with consideration of the market disruption issue, which would cover:

- the measures countries take to protect against serious injury or threat of serious injury;
- the international procedures or arrangements outside GATT, under which restrictive measures are applied; and
- the domestic procedures for handling cases of serious injury or threat of serious injury (whether action is taken internationally within GATT or outside GATT).

In addition, the secretariat should prepare a brief paper setting forth a draft analytical framework to guide the discussions on the reasons why the GATT safeguard system centred in Article XIX had not functioned well. Details of this proposal are contained in MTN/3D/W/1.

16. The Group requested the secretariat to prepare a factual note which would contain the elements listed in paragraph 15. This note would concentrate on emergency-type actions in the widest sense. It was pointed out that only limited information was available in the secretariat on bilateral arrangements under which restrictive measures were applied as well as on domestic procedures for handling cases of serious injury or threat of serious injury. Members of the Group understood that they might have to complete the relevant information in this respect. It was agreed that measures in the textile sector should not be included in the note as information in this area was being made available in another context. It was agreed that the secretariat would also examine the feasibility of providing a summary of existing information concerning measures taken under other GATT safeguard provisions.

17. The Group also agreed that a paper identifying the areas in the field of safeguards which might warrant examination by the Group be prepared by the secretariat. The purpose of this paper would be to permit an orderly further discussion. This paper would base itself on the proposal contained in document MTN/3D/W/1, (a)-(f). There was consensus that additional points for consideration should be added to the list by the secretariat and by delegations.

18. It was further agreed that in its future activities the Group carry out in parallel the general work and the work on differentiated treatment for developing countries and that the secretariat would examine the feasibility of drawing up possible alternatives for the granting of differentiated treatment to developing countries.

19. The Group further agreed that several of the questions raised in the course of the discussion, e.g. differentiated treatment to be accorded to developing countries, non-discriminatory application of the safeguard clause, multilateral surveillance and adjustment assistance measures, required further reflection and consideration.