

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## DRAFT INTEGRATED TEXT ON SAFEGUARDS

(Circulated at the request of certain delegations)

Note: This is an informal working paper drafted with a view to facilitating further consideration of this subject. It does not commit any delegation to all or any part of the text nor does it prejudice in any way the negotiating position of any delegation in any area of the MTN. It is understood that all elements of this text are interrelated and that in the light of its further evolution, delegations may wish to propose additional elements or alternative texts.

### GENERAL PROVISION

Without prejudice to the rights and obligations of GATT contracting parties regarding restrictive measures permitted for specified purposes under the terms of other GATT provisions, protocols, agreements and arrangements negotiated under GATT auspices<sup>1</sup>, signatories undertake not to take safeguard action except through invocation of Article XIX and in accordance with the following provisions.

### CHAPTER 1 - CRITERIA FOR INVOCATION

1. In the implementation of paragraph 1 of Article XIX, signatories agree that safeguard action may only follow a determination by the domestic authorities concerned that imports of a particular product<sup>2</sup> are causing or threatening to cause serious injury to /a /major/ /significant/ part of all/ domestic producers

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<sup>1</sup>Some delegations believe that it will be necessary to identify which "protocols, agreements and arrangements" are referred to, prior to final acceptance of this text. It has been proposed to add at this point, language along the following lines: "... and where such rights are explicitly invoked by reference to specific GATT articles or other provisions ...".

<sup>2</sup>A representative of several contracting parties understands that this language refers to imports of a particular product into the territory of a contracting party.

of like or directly competitive products. Such a determination shall be made only when such imports have increased in such quantities, or in such relative quantities, and under such conditions demonstrably as to account for the principal <sup>1</sup>/ cause /of/ serious injury sustained or demonstrably likely to be sustained by domestic producers. The determination in all cases shall be made on the basis of positive findings of fact and not on mere conjecture, or remote or hypothetical possibility; in the case of a determination of threat of serious injury, those findings shall include evidence that serious injury, although not yet existing, is clearly imminent.

2. Determination of the existence of serious injury or threat thereof, including the evaluation of the effects of the said imports on the domestic producers, shall be based on examination of factors having a bearing on the state of the domestic producers in question, such as: development and prospects with regard to output, turnover, inventories, market share, profits, prices, export performance, employment and wages, imports, utilization of capacity of domestic industry, productivity, and investment /, as well as the size of the market<sup>2</sup>. The list is not exhaustive, nor can any one or several of the factors necessarily give decisive guidance.

/3.<sup>2</sup> (a) The term "domestic producers" shall be interpreted as referring to the domestic producers as a whole of the like products or the directly competitive products or to those of them whose collective output of the products constitutes a /significant/ /major/ proportion of the total domestic production of those products except that when producers are importers of the like products or the directly competitive products the domestic producers shall be interpreted as referring to the rest of the producers.

(b) Where two or more countries have reached such a level of integration that they have characteristics of a single, unified market, the producers in the entire area of integration shall be taken to be the producers referred to in sub-paragraph (a)./

/4. The determination of "principal cause" shall be based on an examination of the effect of the said imports on one hand and on the other hand, all other factors which, individually or in combination, may be adversely affecting the domestic producers, for example: competition among domestic producers, contraction in demand due to substitution by other products or to changes in consumer tastes./

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<sup>1</sup>See also paragraph 4, determination of "principal cause".

<sup>2</sup>This paragraph is an alternative to the bracketed language beginning on the fifth line of paragraph 1. It would be for consideration whether language along the lines of Article 4(a)(ii) of the Anti-dumping Code should be included.

## CHAPTER 2 - CONDITIONS

1. As a rule safeguard measures should be applied in a manner that is proportionate to the injury caused or threatened to be caused. Therefore, it is agreed that:

(a) Product coverage of a safeguard action shall be limited to imports of the particular product or products causing or threatening serious injury, although appropriate allowance may be made for dealing with the possibility of circumvention through, for example, minor design or processing changes or incomplete assembly of component parts.

(b) A safeguard action shall remain in force only so long as it is necessary in order to prevent or remedy serious injury to domestic producers. /At the time it takes a safeguard action, the importing signatory shall stipulate the period of validity of such action. A safeguard action may be extended beyond such period on terms no more restrictive than those obtaining immediately prior to the extension. In no case will the safeguard action and its extension(s) total more than /x/ years./

(c) /No safeguard actions shall be implemented with respect to any product which was subject to a safeguard action within the preceding /two years/.

(d) Safeguard measures shall /to the extent feasible/ be progressively liberalized during the period of their application to encourage the adjustment of domestic producers to import competition /and to minimize trade restrictive effects of safeguard actions on exporting signatories/.

(e) Safeguard measures shall not /normally/ reduce the level of imports below the level in a previous representative period /i.e. a twelve-month period terminating (...) months preceding the month in which domestic procedures provided for in Chapter 7 are initiated/.

## CHAPTER 3 - RESPONSE TO SAFEGUARD MEASURES

### ALTERNATIVE I

1. /Signatories agree that the right of a contracting party to suspend substantially equivalent concessions or other obligations under Article XIX:3(a) is maintained./ If, /however,/ following the consultations described in Chapter 5, a signatory affected as an exporter of the product concerned to the territory of the signatory taking the safeguard action agrees that the requirements of this Agreement have been met by the latter signatory it /shall/ /may/ refrain from exercising its rights under Article XIX:3(a) of the General Agreement with respect to the suspension of substantially equivalent concessions or other obligations so long as the signatory taking the action continues to comply fully with the requirements of this Agreement.

2. If the affected signatory does not so agree and exercises those rights, the signatory taking safeguard action may request review of the matter under Chapter 6.

ALTERNATIVE II

/NOTE: Safeguard action which fully meets the criteria and conditions of Article XIX does not, of itself, constitute nullification or impairment of any GATT rights because Article XIX is an integral part of the GATT and part of the context within which other obligations are assumed. Moreover, in most cases where it has been agreed or established that the safeguard action has been applied in a manner that is consistent with the requirements of Article XIX, there will not necessarily be any undue adverse impact on the interests of the exporting countries concerned. However, it is recognized that there may arise situations in which a safeguard action which is fully justified under Article XIX could nevertheless have or could come to have an adverse effect on the interests of the exporting countries concerned in terms of the impact of the action on the overall balance of advantages./

1. Signatories agree that in considering whether "agreement" in the sense of Article XIX:3(a) is reached they would, in the first instance, examine whether the safeguard action meets the criteria and conditions of Article XIX. If it is agreed or established that the action taken by an importing signatory is fully consistent with the criteria and conditions of Article XIX the exporting signatory concerned will refrain from exercising its rights under Article XIX:3(a) with respect to the suspension of substantially equivalent concessions.
2. At a later point if the exporting signatories concerned consider that, although the safeguard action in question has met the criteria and conditions of Article XIX, that action has nevertheless had a serious adverse effect on their interests, then there would be further consideration of whether there was agreement in the sense of Article XIX:3(a). In these circumstances it is agreed that the exporting signatories would be free to pursue their rights under that Article with respect to the suspension of substantially equivalent concessions. In such a case, however, consideration of "substantially equivalent concessions" would be related to the effect of the measure which has been used by the importing signatory rather than to the amount of the trade covered by the safeguard measure.

/NOTE: In order to make such provisions practical, the ninety-day provision in XIX:3(a) would have to be altered./

/NOTE: The Committee would then have the thirty days provided for in Article XIX during which it could disapprove, or not disapprove, of the proposed suspension of concessions or other obligations. If the Committee was unable to reach agreement, it would be appropriate to provide for referring the matter to the Panel. In such a situation it would probably be necessary to provide for extension of the thirty-day limit, to allow time for the necessary deliberations, although it would be important to ensure that the procedures worked without undue delay./

3. It is further agreed that recourse to the provisions of Article XIX:3(a) by an exporting signatory does not limit its right to invoke the general dispute settlement procedures set out in this Agreement with a view to obtaining a finding that the safeguard action at issue is not in conformity with Article XIX, and a recommendation that the signatory taking such action should cease taking such action (or modify such action so as to conform with Article XIX), and should offer such compensation as will offset the damage to the interests of the exporting signatory.

#### CHAPTER 4 - NATURE OF SAFEGUARD ACTION

NOTE: The text of this Chapter will require substantially more discussion. It does not reflect the views of all delegations which participated in the drafting of the other Chapters of the Draft Integrated Text on Safeguards.

1. In general, safeguard measures pursuant to this Agreement shall be applied on a global basis without discrimination as between sources of imports. In circumstances described in the following paragraph, safeguard measures may be applied to imports from particular sources in accordance with the provisions of this Chapter. In all cases, the obligations, conditions, criteria, and procedures established in the other Chapters of this Agreement shall be adhered to.

2. In unusual and exceptional circumstances where it is clearly established that serious injury or threat thereof, as described in Chapter 1, exists /and is caused by sharp and substantial increase of imports from one or a limited number of countries and the effects of imports from other sources are regarded as being negligible, / and where imports causing serious injury can be clearly distinguished from other imports of a particular product, / an importing signatory may /by agreement with the exporting signatory /pursuant to the subsequent paragraphs, / apply safeguard measures limited to imports from such particular sources causing serious injury or threat thereof, provided such measures are applied equitably

as amongst imports causing or threatening to cause serious injury. The measures may be taken by either the importing signatory or exporting signatory or both.<sup>1</sup>

3. When seeking agreement with respect to a proposed measure of the kind described in the preceding paragraph, in consultations pursuant to Chapter 5, both signatories shall endeavour to reach a conclusion within a reasonable period of time. It is appropriate for such consultations normally to cover, inter alia, factual evidence on injury and source of imports, the terms of the proposed measure in relation to the requirements of Chapter 2 (including level of restriction, period of validity, product coverage, possibility of progressive liberalization of the restriction), and both parties' intentions with respect to offsetting measures or adjustments.

4. In seeking the agreement of the exporting signatory concerned the importing signatory should normally offer more liberal terms than those provided for in Chapter 2 and alleviate the level of restraint over the period of application, and in order to facilitate agreement, the importing signatory should endeavour to offer sufficient compensation to the exporting signatory subject to the safeguard measures.7

/NOTE: Duration of measures.

1. Provisions for maximum duration of safeguard measures (global basis) should be made in this Agreement.

2. In the case of selective application, shorter duration of measures may be appropriate. Differentiation may also be appropriate between cases of consent and non-consent of the exporters involved.

3. This point should be reviewed in conjunction with relevant provisions of the code.7

5. Non-global safeguard measures taken under this Chapter should not place the exporting signatory subject to these measures in a disadvantageous position in relation to other exporting countries not subject to these measures. If an exporting signatory which has agreed to safeguard measures pursuant to the preceding paragraphs considers that it is placed in a disadvantageous position in relation to other exporting countries not subject to the said measures, it may request consultation with the importing signatory invoking the said measures at any time throughout the period of application. The importing signatory shall consult with the requesting exporting signatory without delay. If no satisfactory solution is reached as a result of the consultation, the exporting signatory may withdraw the agreement to the said measures.

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<sup>1</sup>/In adhering to the obligations and procedures specified in this Chapter, signatories further understand that no such measure may be taken without prior consultation as provided in Chapter 5.7

ALTERNATIVE TEXTS

6. If the consultations described in paragraph 3 do not result in agreement between the importing signatory and the exporting signatory within a reasonable period of time\* and if critical circumstances as defined in Article XIX:2 exist, the importing signatory may proceed to take the action proposed on condition that such action is immediately notified to the Committee which shall review the matter without delay.\*\*

\*To allow time for the substantive bilateral discussions which are envisaged in this chapter, this period would normally be of the order of 30 to 60 days.

\*\*Review by the Committee should not prevent continuing consultations, where appropriate, between the signatories mainly concerned with a view to reaching a mutually satisfactory agreement. In such a case the Parties would naturally so inform the Committee.

7. In cases where a unilateral action is thus referred to it, the Committee shall expeditiously consider the matter, in consultation with the parties concerned and shall in particular review the following aspects\*:

(a) whether the circumstances which make it appropriate to limit the action to imports from particular sources, have been shown to exist;

(b) whether the action is applied equitably as between imports causing or threatening to cause serious injury;

\*In carrying out its review the Committee may wish to establish a Panel. The present language is not intended to exclude this possibility. The review would naturally cover all of the circumstances relating to the action as in the case of any global safeguard measure; but it is suggested, in this case of unilateral selective action, that its attention be directed on a priority basis to the justification for selectivity.

6. If, in consultations described in paragraph 3 agreement on the proposed measure is not reached between the importing signatory and the exporting signatory within a reasonable period of time, and the existence of critical circumstances is clearly established - where delay would cause damage difficult to repair and invocation without the agreement of the exporting signatory on the proposed measure is necessary -/ the matter may be referred to the Committee on Safeguard Measures which shall examine the matter without delay and shall also assist the parties in seeking a mutually satisfactory solution to the problem.

7. Upon such referral, the Committee shall expeditiously consider the matter and determine the following, along with any recommendations it considers appropriate\*:

(a) existence of the circumstances as referred to in paragraph 2;

(b) existence of critical circumstances where delay would cause damage difficult to repair and/ invocation without the agreement of the exporting signatory on the proposed measure is necessary;

\*To assist its consideration of the matter, the Committee shall normally establish a panel of experts which shall be normally required to report its findings within 60 days. In general the procedures to be followed for Committee Review would be those provided in Chapter 6, paragraph \_\_\_\_\_ as supplemented by this Chapter.

(c) whether the consultations have sufficiently covered the matters indicated in paragraphs 3 to 5 above.

The Committee shall endeavour in the course of this review to promote any solution which would be mutually satisfactory to the parties, but in the event that such a solution is not discovered, the Committee shall make such recommendations to the parties as it considers appropriate in the light of the facts, including indications of any appropriate modifications to the measure taken which would make it more acceptable.

8. In cases where the Committee recommends that the importing signatory modify the measure taken or discontinue its selective application, the importing signatory shall to the maximum extent possible comply with such a recommendation or with all those aspects of it which it judges to be feasible. It is understood that where for compelling reasons, an importing signatory decides that such a recommendation cannot be followed, the full right of the exporting signatory immediately to suspend equivalent concessions shall be preserved and the Committee is authorized to approve without delay an appropriate level of retaliation in the light of all the circumstances.

(c) whether the proposed measure is to be applied equitably as amongst imports causing or threatening to cause serious injury;

(d) whether the proposed measure is otherwise in accordance with the obligations, conditions, criteria, and procedures established by this Agreement.

The Committee in its consideration shall also look into whether the proposed measure is in line with the provisions of paragraph 4. During the period of the Committee's consideration, the importing signatory may not implement the proposed non-global safeguard measure.

8. Upon a positive determination /approval/ by the Committee, and if no agreement has been reached by that time, the importing signatory may implement the safeguard measure limited to imports from particular sources (which imports are causing serious injury or threat thereof) consistent with the requirements of this Agreement.



9. If the exporting signatory subject to the safeguard measure provided for in the preceding paragraph is of the view that the determination made by the Committee is no longer justified due to changes in circumstances or that it is placed in a disadvantageous position due to the subsequent developments in relation to other exporting countries not subject to the said measure it may refer the matter to the Committee at any time throughout the application of the said measure. Upon such referral, the Committee shall promptly re-examine the said determination and make, where appropriate, any recommendations it considers necessary.<sup>1</sup>

10. Exporting signatories who are "affected contracting parties" referred to in Article XIX:3(a) retain the right to suspend substantially equivalent concessions or other obligations under the GATT as provided in that Article /and subject to the provisions of Chapter 3/. The "agreement" referred to in paragraph 2 of this Chapter may include agreement not to exercise those rights. /Where safeguard measures are taken pursuant to paragraph 8 of this Chapter, the exporting signatory affected by such measures /may have recourse to those rights without passage of the thirty-day requirement provided for in Article XIX:3(a)/ /shall be free to suspend the application of substantially equivalent concessions or other obligations under the GATT to the trade of the importing signatory taking the safeguard measures/.<sup>2</sup>

#### CHAPTER 4 bis

#### /USE OF EXPORT RESTRAINTS/<sup>2</sup>

/1. Parties to this Agreement, whether importers or exporters, undertake not to circumvent the responsibilities and obligations resulting for importers from this Agreement and from Article XIX of the General Agreement by means of arrangements or undertakings of any kind to restrict the exportation of a particular product for the purposes of protecting from import competition domestic producers of a like or directly competitive product in the territory of any other party to the General Agreement.

2. Any party which considers that such a restraint agreement or understanding /including those on a non-governmental basis/ has been or may be entered into which it believes may adversely affect its trade interests may, pursuant to Chapter 5, request consultations with the government(s) it considers to be concerned with a view to obtaining clarification of the matter. If such consultations do not produce a satisfactory outcome, the matter may be referred to the Committee on Safeguard Measures in accordance with the provisions of Chapter 6/.

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<sup>1</sup>It should be recalled that there will also be an annual report to the Committee by signatories on safeguard measures they are maintaining in force and an annual review by the Committee of those measures, pursuant to Chapters 5 and 6.

<sup>2</sup>In the light of the variety of views on this subject, further substantive discussion will be needed.

# CHAPTER 5 - NOTIFICATION, CONSULTATION

1. Signatories shall, in accordance with paragraph 2 of Article XIX, provide written notice /to reach the CONTRACTING PARTIES/ /at least \_\_\_ days/ in advance of the implementation of a proposed safeguard measure under this Agreement giving all relevant particulars /including but not necessarily limited to: a description of the products against which action is proposed, of what action is proposed, the expected date of implementation and for how long the measure is expected to be in effect; and an explanation of why the action is necessary in terms of the criteria set out in Chapter 1/.
2. The signatory proposing to adopt a safeguard measure shall be prepared to open consultations with the CONTRACTING PARTIES and those signatories that have a substantial interest as exporters of the product concerned /or whose trade interests are likely to be substantially affected/ before the measure is introduced. Consultations requested<sup>1</sup> shall begin as soon as possible and /preferably/ /in any case/ no later than /thirty days/ from the date /of notification/ /the notification has reached the CONTRACTING PARTIES/.
- /3. Regarding consultations with the CONTRACTING PARTIES, it is agreed that if any signatory wishes to have the Committee consult with the signatory proposing to take action, the chairman shall, within /15/ days after he has received written notice of such wish, convene the Committee for this purpose.
- /4. Where undue delay in beginning or completing these consultations would lead to damage in the importing country which would be difficult to repair, the importing signatory would be permitted to apply the notified measures on an interim basis pending the final outcome of consultations.
5. Where the procedures indicated above are followed, the provisions of Article XIX:3(a) will apply.
6. In the "critical circumstances" referred to in Article XIX, measures may be introduced immediately /following notification/ /and shall be notified immediately/. In this case the action taken will be on a provisional basis /with a maximum validity of /60/ /90/ days/ and the signatory taking action shall be prepared to open consultations /immediately/ /as soon as possible/ /within 15 days/ /with the /CONTRACTING PARTIES/ /Committee/ and those signatories referred to in paragraph 2/. In this event the provisions of Article XIX:3(b) will apply, in addition to those of XIX:3(a).<sup>2</sup>

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<sup>1</sup>It would be for consideration whether there should be a limited period within which requests for consultation on a (proposed) measure could be made.

<sup>2</sup>Applicability of Article XIX:3(a) to "critical circumstances" measures to be examined further.

7. When a signatory implements a safeguard measure it shall promptly notify the Committee of all relevant particulars. It shall subsequently notify the Committee promptly of any significant changes in the way in which the measure is maintained.

8. A signatory considering the extension of an action shall notify the CONTRACTING PARTIES /\_\_\_ days/ before its scheduled expiration and afford an opportunity to consult with it, regarding the possible extension, before the original action expires.

/9. Any signatory which considers that any matter affecting the operation of the Agreement has not been notified in accordance with the provisions of this Agreement, may make a request in writing to the Committee that such matter be notified by the signatory or signatories concerned and may itself notify the matter./

/10. Signatories to this Agreement shall accord sympathetic consideration to, and shall afford adequate opportunity for prompt consultation regarding, such representations as may be made by another signatory with respect to any matter affecting the operation of this Agreement./<sup>1</sup>

/11.<sup>2</sup> A signatory implementing a safeguard action, in conducting consultations provided for in the preceding paragraphs, shall present following particulars in writing as far in advance as may be practicable and in any case not later than the first opportunity of the said consultations.

(a) In case of the consultation provided for in paragraphs 2 /and 3/,

(i) a product subject to a safeguard action, date of the implementation, duration of the implementation, type and contents of the action.

(ii) materials to prove the following,

(a) that serious injury or threat thereof is determined in compliance with the provisions of Chapter 1.

(b) that the safeguard action is in compliance with the conditions provided for in Chapter 2.

(iii) other particulars for reference.

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<sup>1</sup>This provision is analogous to Article XXII:1 of the General Agreement.

<sup>2</sup>Inclusion of this paragraph in this Chapter or elsewhere in this Agreement to be considered later.

(b) In case of the consultations provided for in paragraph 6, materials to prove the existence of critical circumstances where delay would cause damage which it would be difficult to repair in addition to the particulars described in preceding sub-paragraph.

(c) In case of the consultations provided for in paragraph 8,

- (i) period of extension, type and contents of an extended action.
- (ii) reasons to necessitate the extension concerned and sufficient materials to prove the said necessity.
- (iii) other particulars for reference.<sup>1</sup>

#### CHAPTER 6 - SURVEILLANCE, DISPUTE SETTLEMENT<sup>1</sup>

1. The signatories to this Agreement request the CONTRACTING PARTIES to establish a Committee on Safeguard Measures composed of the representatives of the signatories of this Agreement. This Committee shall elect its own chairman and shall meet as necessary, within /30/ days of a request, but not less than once a year for the purpose of affording signatories to this Agreement the opportunity of reporting on the application of this Agreement, on the application of safeguard measures under this Agreement, and of consulting on any matters affecting the operation of this Agreement. The Committee shall also review once a year all safeguard measures in force, on the basis of reports submitted by signatories (pursuant to paragraph 2) and of other information available to the Committee. In the discharge of its duties, the Committee may consult with any contracting party to the GATT, and any other entity or person, and may request from any signatory such information as it considers necessary and appropriate.

2. Any signatory maintaining a safeguard measure in force shall once a year, on a date set by the Committee, submit a written report to the Committee explaining why the measure is still necessary and what progress is being made towards its removal.

/3. Consultations under paragraph 1 of this Chapter or action taken in accordance with paragraphs 5 and 6 shall be without prejudice to Article XXII and XXIII to the General Agreement.<sup>1</sup>

/3. The signatories also request the CONTRACTING PARTIES to confer upon this Committee the functions of the CONTRACTING PARTIES under Article XIX, XXII and XXIII of GATT for all matters arising as a result of the application of this Agreement as between signatories to it.<sup>1</sup>

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<sup>1</sup>Some delegations suggest that it would be for consideration whether there should be a sub-committee of signatories for, inter alia, continuing surveillance and conciliation purposes.

/3. Nothing in this Agreement shall prejudice the rights of contracting parties under Articles XXII and XXIII of the General Agreement with respect to any matter affecting the operation of the General Agreement; except that, with respect to matters arising between signatories to this Agreement or affecting its operation, including possible nullification or impairment of benefits under this Agreement, signatories shall resort to the procedures of this Agreement./

/4. If any signatory should consider that any safeguard measures, or any system of safeguards, is being applied, or instituted, in a manner inconsistent with the provisions of this Agreement, or any benefit accruing to it directly or indirectly under this Agreement, or the GATT, is being nullified or impaired or that the attainment of any objective of this Agreement or the GATT, is being impeded as the result of the manner in which another signatory, or signatories, is, or are, implementing the provisions of this Agreement, it may, with a view to reaching a satisfactory resolution of the matter, make written representations to the other signatory, or signatories, which it considers to be concerned. Each signatory shall accord sympathetic consideration to and afford adequate opportunity for prompt consultation regarding such representation as may be made by another signatory./

5. It will also be open to any signatory to request the Chairman of the Committee on Safeguard Measures to convene a special meeting of the Committee in order to bring to the attention of parties to the Agreement any problem resulting from action or lack of action by a signatory in a particular case which it has not been possible to resolve by means of bilateral consultations. The Committee shall meet within /30/ days of such request.

6. The Committee shall consider the matter and whatever actions may be appropriate to promote solutions to problems which may be brought to its attention in this way.

#### ALTERNATIVE I

/Including the establishment upon request of a panel of experts acting in their individual capacities to review the matter and make such findings as will assist the Committee in making appropriate recommendations or rulings/.

/NOTE: It will be appropriate to specify in more detail the procedures of this paragraph, in particular the panel procedures, while taking into account the formulation of dispute settlement procedures in other areas of the MTN./

ALTERNATIVE II

7. The signatories also request the CONTRACTING PARTIES to establish a Panel composed of persons qualified in the fields of trade relations and acting in their individual capacities. The panel members shall be appointed from time to time by the Director-General of GATT in consultation with the Chairman of the Committee. The Panel shall carry out the responsibilities assigned to it under this Agreement and such other functions as may be given to it by the Committee. In the discharge of its responsibilities, the Panel may consult with any contracting party to the GATT or any other entity or person and may request from any signatory such information as it considers necessary and appropriate.
8. Any signatory shall respond promptly and fully to any request by the Panel for such information as the Panel considers necessary and appropriate.
9. If no mutually satisfactory solution is reached by the Committee within 45 days from the time the matter was referred to it, the Chairman shall, at the request of any of the signatories concerned direct the Panel inter alia to promptly: (i) investigate the matter; (ii) make appropriate efforts to facilitate a mutually satisfactory solution; (iii) make a statement concerning the facts of the matter including whether a safeguard action met the criteria and conditions of this Agreement and whether a safeguard action by one signatory may have damaged the export interests of any signatory or signatories involved in the dispute; and (iv) as appropriate make such recommendations to the Committee as the facts warrant, including whether a given safeguard measure should be modified or terminated and, adjustments to compensate for the loss of benefit, or damage, occasioned by the safeguard action, measure or practice at issue.
10. The signatories agree that any safeguard action found not to be in conformity with the criteria and conditions of this Agreement shall be modified or terminated so as to conform with the Agreement. Signatories further agree that compensation shall be offered by the signatory concerned for damage caused by any safeguard action which has been found not to be in conformity with this Agreement.
11. If the Panel's recommendations are not adopted by the signatories concerned within 60 days from the time the report has been received by the Committee, the Panel shall, as soon as possible, recommend to the Committee that a signatory or signatories be authorized to suspend the application, to any other signatory or signatories, of such obligations as may be appropriate in the circumstances. If this latter recommendation is not acted on by the Committee within a period of 60 days, the signatory which the Panel has proposed be authorized to suspend obligations shall then be free to do so.
12. Any recommendation under the above paragraph shall aim at maintaining the balance of rights and obligations at the highest possible level.<sup>7</sup>

CHAPTER 7 - DOMESTIC PROCEDURESALTERNATIVE I

/1. Before a safeguard action may be implemented by a signatory, a previously designated governmental entity shall, pursuant to established procedures and within a reasonable period of time, examine the proposals for such action and determine that the requirements of Chapter 1 have been met.

2. In examining the proposal(s), the entity shall provide adequate public notice of the beginning of its examination and the opportunity for importers and any other interested parties to present their views and relevant evidence, in public hearings and otherwise, in order to facilitate the development of the fullest possible information upon which the competent authorities may judge the need for safeguard action. In each case, there shall be published a report of the entity's determination if affirmative, including the factors considered, criteria applied and rationale used in arriving at its conclusions./

ALTERNATIVE II

/1. In arriving at a determination of serious injury, a signatory which intends to take a safeguard action shall follow domestic procedures previously established and made public.

2. Investigation of injury shall normally be initiated upon a request on behalf of the producers affected, supported by evidence of serious injury for the producers concerned. If in special circumstances the importing signatory decides to initiate an investigation without having received such a request, it shall proceed only if it has evidence on serious injury. Once the importing signatory is satisfied that there is sufficient evidence on serious injury and decides to initiate the investigation, it shall notify signatories having a substantial interest as exporters of the product concerned and those known to be concerned thereof and shall, unless there are special reasons against doing so, publish a public note.

3. All interested parties shall be afforded an opportunity to present all evidence that they consider useful in respect to the investigation in question and to express opinions. All information which is provided on a confidential basis shall be treated as strictly confidential by the authorities concerned.

4. The authorities shall notify the governments of exporting signatories and the interested parties of their determination based on the investigation, indicating the reasons thereof and the criteria applied.

5. Except for good reason to be determined to exist, no investigation shall be made with respect to the same subject matter as a previous investigation unless 1 year has elapsed since the determination under paragraph 4 was made./

## CHAPTER 8 - DEVELOPING COUNTRIES

1. Signatories shall, within the terms of the provisions of this Agreement, make particular efforts to refrain from imposing safeguard measures on imports of particular products of special interest to developing country signatories, or, where such measures are imposed, to limit them strictly to the minimum feasible in extent and duration. In particular, measures imposed consistent with the requirements of this Agreement shall normally permit, for any developing country signatories which are small suppliers or new entrants to the market of the product with respect to which action is taken, continued market access with moderate growth on terms more favourable than those accorded to other affected parties.

2. Signatories which are developed countries reserve the right to no longer may determine after consultation with the affected developing countries that it is no longer appropriate to extend differentiated and more favourable treatment under this Article to individual developing country signatories, when such countries, or the relevant sectors within those countries, have achieved substantially higher levels of economic development or the developing country is internationally competitive in the product.7

## CHAPTER 9 - OTHER PROVISIONS<sup>1</sup>

1. All safeguard measures maintained pursuant to Article XIX or the General Agreement by a signatory on the date of entry into force of the Agreement for it, shall be terminated no more than \_\_\_\_ years from that date unless extended under provisions of Chapter 2.

2. All other safeguard measures maintained by a signatory shall be notified to the Committee no later than the date of entry into force of the Agreement for that signatory. Such measures shall be terminated no later than one year following entry into force of this Agreement for that signatory unless continued maintenance of the measures is in conformity with this Agreement.7

3. Each signatory to this Agreement shall, promptly following the date the Agreement enters into force for it, notify the Committee of its legislation, regulations and administrative procedures to be used in the implementation of this Agreement. Hereinafter, each signatory shall notify promptly the Committee of any change in such legislation, regulations and procedures.

NOTE: Consideration should be given to the inclusion in this Agreement of provisions governing the use of automatic licensing and similar surveillance measures for safeguard-related purposes.

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<sup>1</sup>One delegation emphasizes that existing discriminatory bilateral safeguard arrangements should be abolished under a new safeguard system, and that existing discriminatory quantitative restrictions should be eliminated immediately.