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GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

GROUP 3(d) - SAFEGUARDS

Factual Note by the Secretariat

Introduction

1. At its July meeting the Trade Negotiations Committee agreed that Group 3(d) should meet to carry out technical and analytical work on the multilateral safeguard system (document MTN/P/3, paragraph 26). The present note, which is a revised and updated version of document COM.IND/W/88/Rev.1 has been prepared by the secretariat to assist members of the Group in carrying out this task.

2. Safeguard provisions permit the reimposition of barriers to trade reduced and bound in negotiations or otherwise prohibited by the rules governing international trade. These may be designed for widely differing purposes, such as to permit countries to safeguard their balance of payments or their essential security interests, but this paper deals primarily with those provisions which permit the reimposition of barriers to trade for specifically protective purposes, i.e. to safeguard the interests of domestic industries. This type of safeguard is one type of response to problems of adjustment created for industries by imports, another being the provision by governments of adjustment assistance.[1] It may be contained in international agreements, either multilateral or bilateral, or it may be purely national. This note describes the main features of these safeguard provisions and gives some examples. Full information is not at present available to the secretariat on all aspects of the question, in particular on procedures which national governments use when imposing quantitative restrictions either in conformity with, or in contravention of international agreements. This note must therefore be regarded as provisional.

[1] Information on adjustment assistance measures is contained in COM.TD/W/152 and Add. and Corr.

3. This paper is divided into the following sections:

(a) Safeguard provisions in the GATT

4. The most important of GATT safeguard provisions in the present context is Article XIX, which permits contracting parties to reimpose trade barriers in order to protect producers suffering, or threatened by, serious injury. Other safeguard provisions include Article VI, which permits the imposition of anti-dumping and countervailing duties, Article XI, which permits the imposition of import restrictions necessary to the application of standards or to the enforcement of governmental restrictions on the production or marketing of domestic agricultural produce, Article XII, which permits the imposition of import restrictions in order to safeguard a contracting party's external financial position and its balance of payments, Article XVIII, which permits contracting parties the economies of which can only support low standards of living and are in the early stages of development to impose tariff and import restrictions, Article XX which, inter alia, permits action to safeguard public health and safety, Article XXI, which permits action to safeguard essential security interests, and Article XXVIII, which permits contracting parties to renegotiate concessions in GATT schedules, Article XXV, under which the CONTRACTING PARTIES may grant waivers from GATT rules in exceptional circumstances, and Article XXXV, which permits the non-application of the General Agreement between particular contracting parties may also be regarded as safeguard clauses. Of the GATT safeguard provisions, only Article XIX is dealt with in detail in this paper.

5. Article XIX gives contracting parties the right to take emergency action on a non-discriminatory basis in "critical circumstances", but places limits on their freedom of action in this respect by specifying the circumstances in which action can be taken and by defining the obligation or concession which may be modified. It also lays down that consultations must be held with other interested contracting parties and permits retaliatory action by these contracting parties if agreement is not reached in these consultations. The text of Article XIX is contained in Annex A, and a tabular analysis of Article XIX cases in Annex C.

6. A contracting party having recourse to Article XIX must show that:

(a) the product in question is being imported in increased quantities;

(b) the increased imports are the result of unforeseen developments and of the effect of obligations under the GATT; and

(c) the imports enter in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products.

The most important case for the interpretation of these conditions is the first recourse to Article XIX by the United States on women's fur felt hats and hat bodies (see GATT/CP/83 and GATT/CP/106). It is fairly clear from this and subsequent cases that the conditions under (b) above do not, in fact, place any significant constraint on the freedom of action of a contracting party wishing to invoke the Article. The conditions under (a) and (c), on the other hand, limit this freedom of action. It was agreed at Havana that the increase in imports referred to under (a) need not be an absolute increase, but could also be an increase relative to domestic production (see Analytical Index, page 106). These criteria are not very precisely defined; there is, for example, no detailed procedure to be followed in the determination of injury such as is contained in the Anti-Dumping Code (see BISD, Fifteenth Supplement, page 24).

7. Article XIX action has taken the form of an increase in bound tariffs in about two thirds of the cases, and the imposition of quantitative restrictions in about one third of the cases. In a few cases the contracting party chose to establish minimum values for customs purposes, thus increasing the duty payable on goods valued below the minimum. While this is not explicit in the text, an important feature of the Article is that action must be taken on a most-favoured-nation basis. This was the understanding of the drafters (Analytical Index, Third Revision, page 108) and has never been challenged.

8. In the context of the discussion in the Committee on Trade and Development proposals have been made by developing countries to carry out a revision of the provisions of the General Agreement in relation to safeguards in order to establish

special provisions and procedures involving differentiated treatment for developing countries. According to these proposals, safeguards should as a general rule, not be applied to imports from developing countries. Where compelling and exceptional circumstances, which could not be corrected in a reasonable period of time through the introduction of adjustment assistance, required the introduction of safeguards, certain criteria and procedures should be observed by developed countries so as to minimize the effects on trade of developing countries. (See L/3873, pages 2-4, COM.TD/91 and COM.TD/92.)

9. Article XIX lays down that the action taken must be limited to that necessary to prevent or remedy the injury, and that the action must only be taken for such time as may be necessary to prevent or remedy the injury justifying the action. No detailed procedures exist, however, and the practice of different contracting parties has varied very much in this respect, as will be seen from Annex C. One Article XIX action still in force was instituted as long ago as 1958 (Federal Republic of Germany with respect to hard coal).

10. Paragraph 2 of the Article provides that a contracting party having recourse to emergency action must also consult with other interested contracting parties. When Article XIX was drafted it was assumed that such consultations would normally be held before emergency action was taken, but paragraph 2 of the Article gives contracting parties the right to take emergency action immediately "in critical circumstances", if it considers that the conditions enumerated above have been met, and to conduct consultations post hoc. In fact, this procedure has been used in about three quarters of Article XIX cases. The main exception is the United States, which has normally provided for prior consultations.

11. If agreement is not reached in the consultations, other interested contracting parties may retaliate. That the threat of retaliation may lead to a modification of the proposed measure is documented in at least one case (Austria's action on oilcakes, see L/3046 and addenda). The possibility of retaliation has also led to the granting of compensation in a significant number of cases. Compensation may either be agreed in the consultations themselves or agreement may be reached that the bound rate will be renegotiated under Article XXVIII and compensation granted under the procedures of that Article.

12. A contracting party taking Article XIX action therefore has a choice of modifying the action to take into account the interests of other contracting parties, of granting compensation or of running the risk of retaliation. Retaliation has, in fact, only ever occurred in three cases in the history of the GATT none of which action is still in force.

(b) Discussions held in connexion with Japan's accession to GATT

13. At the time that Japan's accession to the GATT was under discussion, some countries wished to retain the right to apply discriminatory quantitative restrictions against imports from Japan. They suggested that an additional safeguard clause should be introduced into the GATT, arguing that a large number of Article XIX actions, which would have to be applied on a most-favoured-nation basis, might lead to a general raising of barriers to world trade (see L/76, paragraphs 3 to 7). Other contracting parties felt that no additional safeguard clause was required.

14. A suggestion was made that the disadvantages of Article XIX referred to above might be avoided by the use of Article XXIII. It was suggested that the existence of the risk that remedial action consistent with the General Agreement would lead to a general raising of tariff levels and other barriers to world trade would create a situation impeding the attainment of objectives of the Agreement which would fall under Article XXIII, paragraph 1(c). Countries might therefore bring a case under Article XXIII, paragraph 2, under which the CONTRACTING PARTIES could authorize the application of safeguard action on a discriminatory basis. It was recognized that there might be circumstances in which the procedures of Article XXIII would be too slow in operation to provide adequate safeguards, and it was therefore suggested that if the contracting parties failed to reach a decision within thirty days it should be possible for the contracting party concerned to take provisional defensive measures pending a decision of the CONTRACTING PARTIES (L/76, paragraphs 8 and 10). However, there was a difference of opinion as to whether an interpretation of Article XXIII along these lines was necessary or desirable and no such interpretation was adopted.

15. Japan became a contracting party in September 1955 without any new general safeguard clause being added to the General Agreement. Some contracting parties invoked Article XXXV on Japan's accession. The number of contracting parties invoking Article XXXV against Japan has decreased in recent years. At the present time, only ten contracting parties still invoke this Article against Japan. Some other contracting parties did not invoke Article XXXV, but nevertheless continued to discriminate against Japan (see for instance L/1164, page 33).

(c) Discussions relating to market disruption

16. In November 1959 the CONTRACTING PARTIES decided that the question of the avoidance of market disruption should be placed on their agenda and that, as a first step, the secretariat should prepare a factual study of the situation (BISD, Eighth Supplement, page 22). The factual study showed that a wide variety of products were subject to restrictions when imported from certain countries (L/1164 and addenda).

17. A Working Party established at the sixteenth session in May-June 1960 came to the conclusion that "whether or not safeguards against situations of 'market disruption' were already available within the provisions of the General Agreement, there were political and psychological elements in the problem which rendered it doubtful whether such safeguards would be sufficient to lead some contracting parties which are dealing with these problems outside the framework of the General Agreement or in contravention of its provisions to abandon these exceptional methods at this time" (BISD, Ninth Supplement, page 106). The Working Party recommended that the CONTRACTING PARTIES should establish procedures to facilitate consultations on these problems which would take account of the following considerations:

(i) that they should reflect the recognition of a problem called "market disruption";

(ii) that contracting parties recognize the advantage of multilateral consultations in arriving at constructive solutions when the problem does not lend itself to bilateral settlement or where a bilateral settlement raises problems for third countries;

(iii) that the procedures should not be such as likely to lead to the restriction, but the orderly expansion of international trade through the provision of improved trading opportunities; and

(iv) that existing rights and obligations under the General Agreement should not be prejudiced.

18. In a decision taken at their seventeenth session (BISD, Ninth Supplement, page 26), the CONTRACTING PARTIES agreed that "in a number of countries situations occur or threaten to occur which have been described as 'market disruption'" and that "these situations generally contain the following elements in combination:

(i) a sharp and substantial increase or potential increase of imports of particular products from particular sources;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country;

(iii) there is serious damage to domestic producers or threat thereof;

(iv) the price differentials referred to in paragraph (ii) above do not arise from governmental intervention in the fixing or formation of prices or from dumping practices.

In some situations other elements are also present and the enumeration above is not, therefore, intended as an exhaustive definition of market disruption". The decision also established a permanent committee to "facilitate consultation between all contracting parties concerned with regard to such situations".

19. The work of the CONTRACTING PARTIES did not lead to the elaboration of any generally applicable solutions, however, but indirectly to the negotiation of a safeguard clause relating to a single industrial sector - textiles.

(a) The Arrangement Regarding International Trade in Textiles

20. The Arrangement Regarding International Trade in Textiles entered into force on 1 January 1974 for a period of four years. The present Arrangement which covers cotton, wool and man-made fibre textiles superseded the "Long-Term Arrangement" which from 1962 to 1973 had regulated much of world trade in cotton textiles. The text of the current Arrangement is contained in document L/3981.

21. The safeguard provision contained in Article 3 of the Arrangement permits importing participating countries to impose, subject to a number of strict conditions and to multilateral surveillance, discriminatory quantitative restrictions when, in its opinion, imports of a certain textile product are causing market disruption as defined in Annex A to the Arrangement. (This definition is reproduced in Annex B to the present document.) Any restraint measures undertaken in accordance with Article 3 are subject to the minimum level conditions laid down in Annex B to the Arrangement and should the restrictive measures remain in force for more than one year the level of restraint must be increased by not less than 6 per cent per annum.

22. Consultations between the importing country and the exporting countries concerned are provided for although unlike Article XIX no provision is made for retaliation on the part of affected exporting countries in the event that agreement is not reached in the consultations. In such case, however, the matter has to be brought for immediate attention to the Textile Surveillance Body (TSB) which is obliged promptly to examine the matter and make appropriate recommendations to the parties directly concerned. Paragraph 6 of Article 1 of the Arrangement states that the provisions of the Arrangement shall not affect the rights and obligations of participating countries under the GATT. Furthermore, paragraphs 9 and 10 of Article 11 provide that should problems continue to exist between the parties even after the TSB has made its recommendations, then the normal GATT procedures may be followed, including the procedures of Article XXIII under which the CONTRACTING PARTIES can authorize retaliatory action.

23. Article 4 of the Arrangement permits participating countries to conclude bilateral agreements on mutually acceptable terms in order to eliminate real risks of market disruption and to ensure the expansion and orderly development of trade in textiles. However, the terms of such bilateral agreements are required to be more liberal than measures provided for under Article 3 of the Arrangement and are subject to multilateral surveillance by the TSB.

24. Article 2 provides that all quantitative restrictions and other restrictive measures maintained prior to the acceptance of the Arrangement must be notified to the TSB. All restrictions so notified should be terminated within one year of the entry into force of the Arrangement unless they are brought into conformity with the provisions of the Arrangement by their inclusion in measures adopted or agreements concluded under Article 3 or 4, or alternatively, by their inclusion in a programme notified to the TSB designed to eliminate existing restrictions in stages within a maximum period of three years from the entry into force of the Arrangement.

25. According to Article 6, special and more liberal procedures are to be applied to imports of textile products from developing countries especially if they are new entrants to the market or if the volume of their textile exports represents only a small percentage of the total volume of textile imports into the importing country concerned.

26. In order to prevent non-participating countries from increasing their share of importing countries' markets at the expense of participating exporting countries, paragraph 3 of Article 8 provides that participating countries' exports shall not be restrained more severely than exports from non-participating countries which are causing or actually threatening market disruption. It will be recalled that under the LTA a similar provision was used to justify safeguard measures applied against non-participating countries.

(e) Bilateral agreements embodying special safeguard mechanisms

27. It has been noted that, when Japan acceded to the GATT in 1955, some countries invoked Article XXXV because they wished to continue to retain the right to apply discriminatory quantitative restrictions on imports from Japan. From a maximum of forty-seven, the number of contracting parties now invoking the Article XXXV against Japan has been reduced to ten. In a number of cases Japan has negotiated bilateral trade agreements with other countries which have permitted them to disinvoke Article XXXV.

28. The first Protocol to the Treaty of Commerce, Establishment and Navigation of 14 November 1962 with the United Kingdom contains a special safeguard provision (United Nations, Treaty series, volume 478 in particular pages 132 to 146). The main features of this safeguard clause, which lays down the conditions to govern

the reintroduction of quantitative restrictions for protective purposes, are that action may be taken on a discriminatory basis, that serious injury (or the threat of it) is a pre-condition of action, that consultations must be initiated before action is taken and that retaliation is specifically permitted. The negotiation of this safeguard clause made it possible for the United Kingdom to remove a number of the discriminatory quantitative restrictions which it maintained against Japan. A number of other restrictions were replaced by export controls exercised by the Japanese Government. It was understood that this special safeguard provision, which is contained in a separate protocol and which derogates from the provisions of Article 17 of the Treaty itself providing for the most-favoured-nation application of quantitative restrictions, was temporary in nature. The safeguard clause contained in the first Protocol has never been used.

29. A second Protocol to the Treaty provided that the remaining restrictions should be reviewed annually "with a view to ensuring orderly development of the trade between the two parties". The number of sensitive items covered by governmental controls (which have taken the form either of import restrictions or export restraints) was very considerably reduced as a result of the annual reviews. The second Protocol was allowed to lapse in 1968.

30. The Agreement on Commerce with the Benelux countries of 8 October 1960 as amended by the Protocol of 30 April 1963 (United Nations, Treaty series, volume 450, page 310 and volume 570, page 24) and the Agreement on Commerce with France of 14 May 1963 (United Nations, Treaty series, volume 518, page 123) contain safeguard provisions similar to those attached to the Treaty with the United Kingdom. These safeguard provisions have been used only once by Benelux and only once by France.

31. Negotiations between the European Community and Japan for a single trade agreement to replace the existing bilateral agreements between individual member States and Japan went on for some time. It would appear that one of the main problems in the negotiations was whether the new trade agreement should contain a safeguard clause similar to that in the agreements with Benelux and France (or a variation of this). It has been reported that both sides agreed to await the outcome of the multilateral trade negotiations in respect to the safeguard provisions of the GATT before resuming the bilateral negotiations.

32. Another technique that has been used at the bilateral level is the negotiation of intergovernmental agreements covering particular sectors of production. The United States has, for example, negotiated bilateral export restraint agreements with Japan, the Republic of Korea, Taiwan and Hong Kong, covering the wool and man-made fibre textile sectors. The texts of these agreements which were concluded in 1971 are contained in L/3668. They provide for an annual increase in the quotas of somewhat over 5 per cent for man-made fibre textiles and of about 1 per cent in the case of wool textiles. These agreements have been notified to the TSB under Article 2 of the Arrangement Regarding International Trade in Textiles.

33. In some other cases governments have negotiated agreements with representatives of foreign industries for the limitation of exports by these industries. The United States Government has, for example secured the agreement of industrial associations in the European Communities and Japan to limit their exports of steel mill products to the United States. The latest agreements, concluded in May 1972, cover the three years 1972, 1973 and 1974. The European producers have agreed to limit the increases in the tonnages which they export to the United States to 1 per cent in 1973 over 1972, and to 2½ per cent in 1974 over 1973. The growth element in the agreement with Japanese producers is 2½ per cent for each of these periods.

34. While there are no internationally-agreed criteria for the negotiation of such bilateral restraint agreements, the establishment of these agreements does not affect the basic rights and obligations of the parties under the General Agreement and it is reasonable to assume that the existence of these basic rights and obligations have an influence on the terms of the agreements. They do, however, escape from international surveillance which would ensure that their implications for other countries is taken into account.

35. Finally, there are a growing number of purely inter-industry agreements which provide for the quantitative limitation of exports or the exercise of price discipline. In Japan these cartels are formed under the guidance of the Government, in many cases in order to maintain orderly exports. However, since one importing country has pointed out that these cartels might not be in accord with her anti-monopoly laws, consultations have taken place with regard to this problem.

(f) Accession to the GATT of socialist countries

36. At the time that the accession of socialist countries was under discussion some contracting parties wished to include in the protocols of accession of these countries additional safeguard clauses to those already figuring in the General Agreement for preventing eventual market disruption situations. The protocols for the accession of Poland, Romania and Hungary therefore include additional safeguard clauses which are similar but not identical. These safeguard clauses have never been applied. (For Polish Protocol see BISD 15th Supplement, pages 46-52, paragraph 4; for Romanian Protocol see BISD 18th Supplement, pages 5-10, paragraph 4; for Hungarian Protocol see BISD 20th Supplement, pages 3-8, paragraph 5.)

(g) Generalized System of Preferences

37. The preference-giving countries have reserved the right to withdraw the preferences if they deem it necessary. They have, however, declared that "such measures would remain exceptional and would be decided on only after taking due

account, in so far as their legal provisions permit, of the aims of the Generalized System of Preference and the general interests of the developing countries, and in particular the interests of the least developed among the developing countries" (UNCTAD document TD/B/329/Rev.1, Part One, Section III, the text of which is reproduced in its entirety in Annex D to the present document). A summary of later developments in regard to safeguard measures under the GSP may be found in UNCTAD document TD/B/C.5/22 (paragraphs 65-71). A specific case of safeguard action under the GSP was that taken by the United Kingdom in November 1972 in regard to imported leather (see UNCTAD document TD/B/C.5/17/Add.1).

(h) Regional integration

38. In the case of the EEC the Rome Treaty provided a safeguard clause only during the transitional period. This is contained in Article 226 of the Treaty. There is no reference to the concept of injury and the article may be invoked by a member State whenever "there are serious difficulties which are likely to persist in any sector of economic activity or difficulties which may seriously impair the economic situation in any region". But a decision as to what action, if any, should be taken and the conditions on which it is to be applied, rests with the Commission. Such a decision may be challenged before the European Court of Justice.

39. Safeguard clauses are also contained in agreements between the European Community and certain other countries. A recent example is found in the Agreement between the European Community and Switzerland of 22 July 1972. Under Article 26 of the Agreement "serious disturbances in a sector of economic activity which may lead to a serious change in the economic situation of a region" are pre-conditions for safeguard action. It is foreseen in Article 27 that the Mixed Committee established by the Agreement will normally be used to find a mutually acceptable solution to any problems that arise, but action may be taken unilaterally in "exceptional circumstances".

40. The relevant EFTA safeguard clause is contained in Article 20 of the Stockholm Convention. As originally drafted this Article permitted member States to impose quantitative restrictions unilaterally but specified a maximum level and duration for such restrictions which were, in addition, subject to review by the Council of the Association. The Article did not make use of the concept of injury but permitted action only if "an appreciable rise in unemployment in a particular sector of industry or region is caused by a substantial decrease in internal demand for a domestic product, and this decrease in demand is due to an increase in imports from the territory of other member States as a result of the progressive elimination of duties, charges and quantitative restrictions" in accordance with the provisions of the Convention.

41. This Article has been rewritten since the end of the transitional period (EFTA Council Decision No. 15 of 1970, 3 December 1970). Member States may now invoke the Article if "unforeseen and serious difficulties arise or threaten to arise in a particular sector of industry or region, and to remedy the situation the enforcement of measures which derogate from the Convention or from decisions or agreements reached under the Convention is required". It is therefore no longer necessary for a member State invoking the Article to show that its difficulties result from the operation of the Convention. But any safeguard measures must be authorized by prior decision of the Council which must, if necessary, act within a period of fifteen days. Such measures shall be applied for a period of not more than eighteen months unless the Council decides on an extension.

42. An integration agreement which adopts a different approach from the Rome Treaty and from the Stockholm Convention is the Agreement concerning Automotive Products between the United States and Canada. Article III of this very short Agreement provides that "the commitments made by the two Governments in this Agreement shall not preclude action by either Government consistent with its obligations under Part II of the General Agreement on Tariffs and Trade" of which Article XIX and the other GATT safeguard clauses form a part.

(i) National procedures

43. Governments have their own national provisions which come into play when they consider using any of the multilateral or bilateral safeguards discussed above (or taking safeguard action which is contrary to internationally agreed rules and without reaching agreement bilaterally with their trading partners). In some countries the process is normally public, allowing all interested parties including foreign suppliers and domestic importers and consumers, as well as domestic producers, to present evidence. In most countries the process is private and foreign suppliers may well be confronted by a fait accompli if safeguard action is taken. Little information is available to the secretariat about procedures in the second category.

44. An example of countries in the first category is the United States, which has a number of different procedures. The standard safeguard procedure is contained in the Trade Expansion Act of 1962. Under Section 301 of the Act in each case referred to it "the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry producing an article which is like or directly competitive with the imported article". The Act also specifies the action to be taken if the finding of the Tariff Commission is affirmative, the main feature being that

adjustment assistance may be used as an alternative to, or in combination with, safeguard action. Safeguard action proper is dealt with in Section 351 (providing for the imposition of tariffs or quantitative restrictions) and Section 352 (providing for the negotiation of export restraints). Any action to impose tariffs or quantitative restrictions under Section 351 must be reviewed after four years.

45. A different procedure is set out in Section 204 of the Agricultural Act of 1956 (as amended in 1962) which relates to textiles and textile products as well as to agricultural commodities. This gives the President authority to negotiate with foreign governments for agreements providing for export restraints without a finding of injury to United States' producers. In addition, if a multilateral agreement is concluded "among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded" he may impose quantitative restrictions on imports of these articles from countries or territories not members of the agreement. For example, the fact that the United States has acceded to the Arrangement Regarding International Trade in Textiles gives the President the right, under the Act, to impose quantitative restrictions on imports of textile products from countries which are not party to the Arrangement.

46. Public hearings are not always held in the United States, however, none having been held in connexion with negotiations for export restraints by supplying producers on steel mill products.

47. Other countries with statutory requirements for public investigation of possible escape clause actions include Australia and Canada.

ANNEX A

Text of Article XIX

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not

later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which the written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1(b) of this article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

ANNEX B

Text of Annex A to the Arrangement Regarding International Trade in Textiles concerning Market Disruption

I. The determination of a situation of "market disruption", as referred to in this Arrangement, shall be based on the existence of serious damage to domestic producers or actual threat thereof. Such damage must demonstrably be caused by the factors set out in paragraph II below and not by factors such as technological changes or changes in consumer preference which are instrumental in switches to like and/or directly competitive products made by the same industry, or similar factors. The existence of damage shall be determined on the basis of an examination of the appropriate factors having a bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investments. No one or several of these factors can necessarily give decisive guidance.

II. The factors causing market disruption referred to in paragraph I above and which generally appear in combination are as follows:

(i) a sharp and substantial increase or imminent increase of imports of particular products from particular sources. Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Such prices shall be compared both with the price for the domestic product at comparable stage of commercial transaction, and with the prices which normally prevail for such products sold in the ordinary course of trade and under open market conditions by other exporting countries in the importing country.

III. In considering questions of "market disruption" account shall be taken of the interests of the exporting country, especially in regard to its stage of development, the importance of the textile sector to the economy, the employment situation, overall balance of trade in textiles, trade balance with the importing country concerned and overall balance of payments.

ANNEX C

Tabular Analysis of Article XIX Cases

ANNEX C

Table 1

ARTICLE XIX - ACTIONS TERMINATED

Contracting Party	Product	Type of measure	Date		Prior notification/ consultation	Compen-sation	Reference
			Introduced	Terminated or renegotiated			
Australia	Antibiotics	QR	3 Aug. 1962	4 June 1963	No	No	L/1820 & Add.1
	Casual footwear	QR	1 Apr. 1959	20 May 1960	No	No	L/974 & Adds.1 & 2
	Copper brass sheet and strip	QR	4 Mar. 1965	1 Sept. 1965	No	No	L/2373, L/2474
	Forged steel flanges	Tariff	12 Oct. 1962	May 1967	No	Yes	L/1863, SECRET/156, L/2791
	Heat resisting glassware	Tariff	14 May 1964	Mar. 1968	No	Yes (XXVIII)	L/2220, L/2985
	Linseed oil	Tariff	Feb. 1963	Apr. 1965	No	Yes (XXVIII)	L/1981, L/2455
	Motor mowers	QR	May 1960	17 July 1961	No	No	L/1217 & Add.1, L/1527
	Piece-goods, woollen	Tariff	26 May 1961	Dec. 1964	No	Yes (XXVIII)	L/1497, L/2455
	Polyethylene and polypropylene twine, cordage, rope and cable	QR	Jan. 1966	1 Jan. 1969	No	No	SECRET/162, L/2961 & Add.1
	Printed cotton textiles	QR	27 Feb. 1958	15 May 1958	No	No	L/797 & Adds.1 & 2

Table 1 (cont'd)

Contracting Party	Product	Type of measure	Date		Prior notification/ consultation	Compen-sation	Reference
			Introduced	Terminated or renegotiated			
Australia (cont'd)	Refrigerating appliances, parts of	Tariff	31 July 1962	May 1967	No (?)	Yes (XXVIII)	L/1819, SECRET/156, L/2791
	Timber	QR	9 July 1962	11 Jan. 1964	No	No	L/1812 & Adds. 1 & 2
	Knitted coats and the like	QR	19 Dec. 1967	1 Sept. 1972	No	No	L/2957, L/3834
	Knitted shirts	QR	June 1969	1 Sept. 1972	Yes	No	L/3217, L/3834
Austria	Chicken eggs	QR	Feb. 1964	9 Mar. 1964	No	No	L/2148 & Add.1
	Matches	QR	13 Nov. 1967	1 Jan. 1968	No	No	L/2920 & Add.1
	Oilcakes	Tariff	15 July 1968	1 Mar. 1969	No	No	L/3046 & Add.3
	Porcelain	Tariff	1 Jan. 1959	31 Dec. 1960	No	Yes	L/863 & Add.1
Canada	Corn	Tariff	30 Oct. 1968	31 Dec. 1968	No	No	L/3097 & Add.1
	Frozen peas	Tariff	12 Feb. 1958	15 June 1959	No	No	AIR/124, L/1017
	Potatoes	Tariff	July 1966	31 Aug. 1966	No	No	L/2682
	Potatoes	Tariff	Sept. 1968	2 Nov. 1968	No	Yes	L/3066 & Add.1
	Strawberries	Tariff	14 June 1957	14 Dec. 1957	No	No	L/642
	Strawberries	Tariff	21 May 1971	21 July and 18 Aug. 1971	No	No	L/3539 & Adds.1 & 2
	Turkeys	Tariff	17 Nov. 1967	31 Jan. 1968	No	No	L/2924 & Add.1
	Gasoline	QR	7 May 1970	June 1973	No	No	L/3400, L/3877
	Fresh cherries	Tariff (Surtax)	30 June 1973	30 Aug. 1973	No	Yes	L/3887 and Adds.1 to 6

Table 1 (cont'd)

Contracting Party	Product	Type of measure	Date		Prior notification/ consultation	Compen-sation	Reference
			Introduced	Terminated or renegotiated			
EEC (Italy)	Magnetophones	QR	18 Apr. 1973	31 Dec. 1973	No	No	L/3847, L/3892, L/3977
France	Foundry pig-iron	Tariff	15 Feb. 1964	31 Dec. 1970	No	No	L/2183, L/2532, L/2731, L/3170, L/3505
Greece	Apples	Tariff	Mar. 1955	Renegotiated Dec. 1955	No	Yes (XXVIII)	L/346 5 PRM
	Electric refrigerators	Tariff	1956	Aug. 1961	No	Yes (XXVIII)	L/541 SECRET/131/ Add.7
Israel	Radio equipment	Tariff	1 Jan. 1971	21 Mar. 1971	No	No	L/3424 & Add.1
Italy	Foundry pig-iron	Tariff	15 Feb. 1964	31 Dec. 1970	No	No	L/2197, L/2536, L/3505
Rhodesia & Nyasaland	Cotton & rayon piece-goods	QR	5 Nov. 1962	28 Feb. 1964	No	No	L/1898, L/2213
United States	Alsike clover seed	Tariff	1 July 1954	30 June 1959	Yes	No	AIR/47, L/216, L/662
	Bicycles	Tariff	19 Aug. 1955	Renegotiated 1961	No	Yes (XXVIII)	L/433 1960/61 Protocol
	Clinical thermometers	Tariff	21 May 1958	7 Jan. 1966	Yes	No	L/803 & Add.1, L/2566

Table 1 (cont'd)

Contracting Party	Product	Type of measure	Date		Prior notification/ consultation	Compen-sation	Reference
			Introduced	Terminated or renegotiated			
United States (cont'd)	Cotton type-writer ribbon cloth	Tariff	22 Sept. 1960	11 Oct. 1967	No (?)	Yes	L/1313, L/1746 L/2953
	Dried figs	Tariff	28 July 1952	Renegotiated 1966	Yes	Yes (XXVIII)	L/14, L/2592
	Hatters' fur	Tariff	9 Feb. 1952	14 Sept. 1958	Yes	No	CP/140, L/851,
	Lead and zinc	QR	1 Oct. 1958	22 Oct. & 22 Nov. 1965	Yes	No	L/819, L/2489
	Safety pins	Tariff	29 Nov. 1957	28 Jan. 1966	Yes	Yes	AIR/105, L/624, & Add.1, L/1746, L/2565
	Spring clothes pins	Tariff	9 Nov. 1957	Renegotiated 1961	No	Yes (XXVIII)	L/757 1960/61 Protocol
	Stainless steel flatware	Tariff	1 Nov. 1959	11 Oct. 1967	Yes	No	L/791, L/1076, L/2543, L/2953
	Towelling of flax, hemp or ramie	Tariff	26 July 1956	Renegotiated 1964	Yes (?)	Yes (XXVIII)	AIR/92, L/573, & Add.1, L/2592
	Womens' fur hats and hat bodies	Tariff	1 Dec. 1950	Renegotiated 1953	Yes	Yes (XXVIII)	GATT/CP/83 6th PSC
	Pianos	Tariff	21 Feb. 1970	20 Feb. 1974	Yes	No	L/3314, L/3371 & Add.1, L/4005

ANNEX C

Table 2

ARTICLE XIX - ACTIONS STILL IN FORCE

Contracting Party	Product	Type of measure	Date introduced	Prior notification/ consultation	Compen-sation	Reference
Australia	Alloy steels	Tariff	29 April 1966	No	No	SECRET/163
	Used 4-wheel-drive vehicles	QR	21 April 1967	No	No	L/2787
Canada	Men's and boy's shirts	Tariff	30 November 1971	Yes (?)		L/3613 & Add.1
	Woven fabric shirts	QR	3 June 1970	No		L/3402
France	Horse meat	QR	17 March 1968	No	No	L/3000
F.R. Germany	Hard coal and hard coal products	QR	4 September 1958	No	No	L/855
	Petroleum and shale oils	QR	10 December 1964	No	No	L/2321
Greece	Tyres	Tariff	April 1965	No	No	L/2431 & Add.1
Italy	Raw silk	QR	19 May 1969	No	No	L/3231 & Add.1
Nigeria	Cement	QR	14 December 1961	No	No	L/1781
Peru	Lead arsenate and valves for industrial purposes	Tariff	23/26 Feb. 1963	No	No	L/1979

Table 2 (cont'd)

Contracting Party	Product	Type of measure	Date introduced	Prior notification/ consultation	Compen-sation	Reference
Spain	Cheese	Tariff	30 May 1966	No	No (?)	L/2670, L/3407 & Add.1
	Synthetic rubber	Tariff	February 1967	No	Yes	L/2820 & Add.1-4 L/3323 & Add.1, L/3375
United States	Ceramic tableware	Tariff	1 May 1972	Yes		L/3678, L/3700 and Add.1
	Sheet glass	Tariff	17 June 1962	Yes	Yes	L/1509 & Add.1-3, L/1951, L/1959, L/2743, L/2953, L/2959, L/3316, L/3664
	Wilton and velvet carpets	Tariff	17 June 1962	Yes	Yes	L/1530 & Add.1-3, L/1951, L/1959, L/2953, L/3378
	Ball bearings	Tariff	1 May 1974	Yes	-	L/3897, L/4016 and Add.1

ANNEX D

Generalized System of Preferences

The following is the text of the section of the Agreed Conclusions of the Special Committee on Preferences dealing with safeguard mechanisms (UNCTAD document TD/B/329/Rev.1, Part One, Section III):

III. SAFEGUARD MECHANISMS

1. All proposed individual schemes of preferences provide for certain safeguard mechanisms (for example, a priori limitation or escape-clause type measures) so as to retain some degree of control by preference-giving countries over the trade which might be generated by the new tariff advantages. The preference-giving countries reserve the right to make changes in the detailed application as in the scope of their measures, and in particular, if deemed necessary, to limit or withdraw entirely or partly some of the tariff advantages granted. The preference-giving countries, however, declare that such measures would remain exceptional and would be decided on only after taking due account in so far as their legal provisions permit of the aims of the generalized system of preferences and the general interests of the developing countries, and in particular the interests of the least developed among the developing countries.

2. Preference-giving countries will offer opportunities for appropriate consultations to beneficiary countries, in particular to those having a substantial trade interest in the product concerned, in connexion with the use of safeguard measures; where prior consultations are not possible, preference-giving countries will undertake for the purpose above to inform all beneficiary countries, through the Secretary-General of UNCTAD, with a minimum of delay, of the action taken. Safeguard measures taken should be reviewed from time to time by the preference-giving country concerned with the aim of relaxing or eliminating them as quickly as possible.

3. Certain preference-giving countries provide for a mechanism including an a priori limitation formula under which quantitative ceilings will be placed on preferential imports. Some of these countries might, nevertheless, have recourse also to escape type measures, for those products which are not covered by a priori limitation formulae.

4. For those countries which do not envisage a priori limitations, escape-type measures are the main safeguards at their disposal.