

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## Multilateral Trade Negotiations

### GROUP 3(d) - SAFEGUARDS

#### Feasibility Study

#### Summary of Information Available on Measures Taken under GATT Provisions other than Article XIX

1. Group 3(d) at its meeting in October 1974, requested the secretariat to examine the feasibility of providing a summary of existing information concerning measures taken under GATT safeguard provisions other than Article XIX (document MTN/13, paragraph 16).
2. The present paper is a summary of the information which is available to the secretariat at the present time. For the purposes of this paper the secretariat has interpreted the term "safeguard provisions" to mean those provisions which permit the withdrawal or modification of concessions contractually bound in GATT schedules or those which permit the imposition of barriers to trade which are otherwise prohibited by the General Agreement; the secretariat has based itself mainly on those Articles of the General Agreement referred to in paragraph 4 of document MTN/3D/1. However, the paper also deals with measures which contracting parties are permitted to take under the terms of the Protocol of Provisional Application or under the provisions of the various protocols of accession. Conversely, measures contrary to the provisions of GATT or which are outside their purview are excluded from the present study.
3. Measures falling under the provisions of Part IV of the GATT, and relevant points which have been discussed in the Committee on Trade and Development, will be dealt with in a separate study on differentiated treatment for developing countries which the Group requested at its October meeting (MTN/13, paragraph 18).

#### I. GATT PROVISIONS

##### Article VI

4. This Article provides for the imposition of two different types of measure, namely: anti-dumping duties and countervailing duties. No obligatory reporting procedure is provided for in regard to either type of measure and therefore, apart from certain material on anti-dumping referred to in paragraph 5 below, the secretariat is not able to provide comprehensive information on measures taken under the Article.

5. Under the terms of the Anti-Dumping Code, the twenty-three countries who are parties to the Code are obliged to report annually on the administration of their anti-dumping laws and regulations, and to give summaries of the cases in which anti-dumping duties were assessed. In line with this obligation, detailed information is supplied to the Committee on Anti-Dumping Practices and published in the COM.AD series of documents which are usually derestricted after a period of twelve months. Also, summaries of Anti-Dumping Activities are annexed to the annual reports of the Committee. The texts of the anti-dumping laws and regulations in force as at 15 February 1974 in the countries which were at that time parties to the Anti-Dumping Code have been reproduced in the GATT publication: "Anti-Dumping Legislation".

#### Article XI

6. Paragraph 2 of Article XI provides for certain exceptions to the ban on quantitative restrictions. On a few occasions, certain contracting parties have notified measures taken under the provisions of this paragraph. However, no obligatory reporting procedure is provided for, and therefore the secretariat is not in a position to provide comprehensive information on measures taken under the provisions of this Article.

#### Article XII and XVIII

7. Articles XII and XVIII:B permit the imposition of import restrictions in order to safeguard a contracting party's external financial position and its balance of payments. The provisions of Section B of Article XVIII deal specifically with measures taken by the developing countries to safeguard their balance of payments. Sections C and D of Article XVIII permit measures not consistent with other provisions of the General Agreement to be applied for development purposes. In practice, these latter two Sections have almost never been applied. The provisions of both Articles XII and XVIII of the General Agreement provide for consultation and reporting procedures and consequently information on the measures taken by contracting parties who have invoked either of these Articles can be supplied to the Group. At the present time there are seventeen contracting parties consulting in the Committee on Balance-of-Payments Restrictions. Not all developing countries which have balance-of-payments difficulties and which apply import restrictions consult under the relevant procedures and therefore the secretariat has only partial information on measures applied by such countries,

8. In some cases, countries with balance-of-payments difficulties have preferred to resort to measures other than quantitative restrictions, e.g. surcharges and import deposit schemes, neither of which measures is referred to in Article XII or XVIII. Measures of this type applied by industrialized countries have been

examined in special working parties. In the case of developing countries, the measures have usually been examined in the Committee on Balance-of-Payments Restrictions and in certain of these cases the Committee has recommended the granting of waivers under Article XXV. The secretariat can provide information on the measures which have been taken and the reasons which have been given for their introduction.

#### Articles XX and XXI

9. There is no reporting requirement in the GATT for measures taken under Article XX (General Exceptions) or Article XXI (Security Exceptions). Hence, the secretariat is not in a position to provide information on measures taken under the provisions of these Articles.

#### Article XXV

10. The relevance to the present study of any particular waiver granted under the provisions of Article XXV, paragraph 5, would depend on the purposes for which the waiver was granted. In regard to the waivers which have permitted the imposition of barriers to trade, only a certain number (usually the longer term waivers) contain obligatory reporting provisions. However, some information on the rationale of the shorter term waivers may be gleaned from statements made by representatives of the requesting countries at the Council. This information could be made available by the secretariat.

#### Article XXVIII - Renegotiations

11. The secretariat can provide comprehensive information on concessions which have been withdrawn or modified as a result of Article XXVIII renegotiations, as well as in regard to compensatory concessions granted in the course of such negotiations. The secretariat also has available information on the trade coverage of such concessions. However, the secretariat can only provide partial information on the rationale of requests for renegotiations under Article XXVIII and their possible relevance to the safeguard issue: where renegotiations have been conducted under the provisions of paragraphs 1 or 5, no reasons need to be stated; on the other hand, requests for authority to renegotiate under paragraph 4 of the Article require the approval of the CONTRACTING PARTIES and consequently the secretariat can give some information on explanations which have been given by the contracting parties concerned to justify applications for renegotiations under this paragraph.

Article XXXV - Non-Application of the Agreement between Particular Contracting Parties

12. The secretariat can give complete information on all cases of the non-application of the General Agreement between particular contracting parties according to the provisions of Article XXXV. However, by definition, the measures taken under this Article fall outside the purview of the General Agreement.

II. PROTOCOL OF PROVISIONAL APPLICATION AND ACCESSION PROTOCOLS

13. Under the Protocol of Provisional Application and various protocols of accession, contracting parties may continue to apply restrictions which are inconsistent with the provisions falling under Part II of the General Agreement if such restrictions are mandatory under legislation in force before accession to the GATT. No up-to-date information is in the hands of the secretariat on restrictive measures of a safeguarding nature applied in accordance with such legislation.

14. Under the terms of Switzerland's Protocol of Accession, the latter country reserved its position with regard to the application of the provisions of Article XI to the extent necessary to permit it to apply import restrictions on various agricultural products. Switzerland is obliged to furnish annually to the CONTRACTING PARTIES a report on the measures maintained consistently with the reservation and is obliged to enter into consultation upon request in regard to such measures.

15. Under the terms of the accession protocols of Poland, Romania and Hungary, contracting parties which at the time of accession of these countries were applying discriminatory import restrictions against them may continue to do so on a temporary basis, provided that the discriminatory element in them is not increased and that such restrictions are progressively relaxed. Discriminatory restrictions remaining in force have to be notified to the appropriate Working Party. The secretariat can provide information on such measures.

III. OTHER SOURCES OF INFORMATION

16. The preceding paragraphs have summarized information which has been made available in connexion with procedures relating to specific provisions of the GATT and accession protocols. Other information is available which has been supplied in accordance with procedures which do not relate to particular provisions of the General Agreement.

### Inventory of Non-Tariff Measures

17. The Inventory lists measures which, in the opinion of notifying exporting countries, restrict or distort trade. Information on each of these measures is normally presented under the following headings:

- the country maintaining the measure
- a brief description of the measure
- the names of notifying countries
- a summary of the debate held with regard to the measure
- GATT relevance.

In regard to the last point, in certain cases the country maintaining the measure has justified it in terms of one of the safeguard provisions dealt with in this paper. The secretariat could extract details of such cases from the Inventory.

### Joint Working Group on Import Restrictions

18. The documentation assembled by the Joint Working Group contains comprehensive information on all types of import restrictions maintained by eighteen industrialized countries in respect of industrial and agricultural products. In accordance with the decision of the Council of June 1971, the data assembled by the Joint Working Group is being continuously updated and the latest revision of the Annexes to the Report of the Joint Working Group is contained in document COM.IND/W/116, COM.AG/W/93.<sup>1</sup> In accordance with the terms of reference of the Joint Working Group, the measures in question were notified without prejudice to the question of whether they were or were not consistent with GATT obligations. However, the secretariat could attempt to summarize the few cases where reference has been made to particular safeguard provisions.

### Documentation of Group 3(a)

19. In accordance with Task 3 of the Programme of Work, Group 3(e) is preparing a series of documents on measures relating to products falling within chapters 1-24 of the BTN. These include, inter alia, the following:

- quantitative restrictions applied by countries covered by the Joint Working Group (MTN/3E/DOC/7 and addenda);

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<sup>1</sup>To be issued shortly.

- quantitative restrictions applied by countries other than those covered by the Joint Working Group (MTN/3E/DOC/8 and addenda);
- sanitary and phyto-sanitary regulations (MTN/3E/DOC/9 and addenda);
- various non-tariff barriers (MTN/3E/DOC/10 and addenda).

In only a very limited number of cases have countries made reference to specific safeguard provisions of the GATT in relation to the measures listed. However, in the case of phyto-sanitary regulations, it might be reasonable to assume that most of the measures applied would be justified under the provisions of Article XX(b).