

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/3D/4

17 December 1974

Special Distribution

Multilateral Trade Negotiations

Group 3(d) - SAFEGUARDS

PROBLEM AREAS WHICH MIGHT WARRANT EXAMINATION BY THE GROUP

Note by the Secretariat

1. At its first meeting in October 1974, Group 3(d) requested the secretariat to prepare "a paper identifying the areas in the field of safeguards which might warrant examination by the Group", which "would base itself on the proposal contained in document MTN/3D/W/1 (a)-(f). There was consensus that additional points for consideration should be added to the list by the secretariat and by delegations" (MTN/13, paragraph 17). Members of the Group are consequently requested to communicate to the secretariat additional questions relating to the possible establishment of a new multilateral safeguard system which they might have.
2. In accordance with the above instruction, the secretariat has drawn up the following list of issues. In drawing up the list, the secretariat has taken account of the suggestions made by delegations at the Group's meeting and elsewhere. The list is not exhaustive and its order of presentation does not reflect a judgement on the priority of the issues mentioned. It is merely intended to provide a basis for the Group to decide on its programme of work.
3. General questions
 - (a) What should be the objectives of a multilateral safeguard system?
 - (b) Should the rules of the existing safeguard system of the GATT be maintained or revised, should there be a tightening up of its procedures, or is there simply a need for greater discipline in the application of existing safeguard provisions?
 - (c) To what extent is there need or scope for objective criteria or conditions for determining the existence of a situation in which safeguard action may be required and permitted?

- (d) Should the safeguard system distinguish between measures appropriate to deal with essentially short-term phenomena and measures appropriate to longer run structural problems? If so, what should be the form of these alternative measures?
- (e) Should the safeguard system apply without distinction to all products?
- (f) How should the multilateral safeguard system relate to those countries which do not participate in the safeguard system?
- (g) To what extent (if any) can the continued existence of (i) residual restrictions, and (ii) "voluntary" export restraints, be related to the provisions of the present multilateral safeguard system?
- (h) Are there any special circumstances which justify a selective application of safeguard measures?
- (i) What scope exists for providing differentiated treatment to developing countries in the field of safeguards?

4. Conditions and criteria for use of safeguard measures

- (a) Is there any need to revise the conditions and criteria laid down in paragraph 1 of Article XIX, e.g. with regard to "serious injury" or "threat of serious injury"?
- (b) Are the conditions and criteria specified in paragraph 2 of Article XIX satisfactory or should they be revised?

5. Domestic procedures

Should a requirement for public domestic procedures for investigation of possible safeguard action be incorporated into the multilateral safeguard system? If so, what form should they take?

6. Type, level and duration of the restrictions

- (a) Should governments continue to maintain freedom of action in determining the various types of restrictive action, the levels of imports allowed in and the time-table for the elimination of the measures taken?

- (b) Are there circumstances, either domestic or international, in which a specific type of safeguard measure, such as tariff adjustment, import restriction or other measure, is called for? If so, what are the circumstances and the corresponding measures?
- (c) Should the duration of restrictions be specifically limited?

7. Consultation and review procedures

- (a) Should prior notification and consultation always be required? If not, under what circumstances?
- (b) In the case of prolonged application of measures, what provision should be made to ensure effective multilateral review? Should affected countries have the right of access to a multilateral surveillance body?

8. Domestic adjustment

Should there be a link between the application of safeguard measures and domestic adjustment measures? If so, what should be the form of such a link?

9. Interests of exporting countries

Is there scope or justification for introducing provisions aimed at ensuring consideration of the effects on production and trade of exporting countries when safeguard action is taken?

10. Multilateral surveillance and settlement of disputes

- (a) Should provisions be made for stricter multilateral surveillance of safeguard actions? If so, what provisions should they contain, e.g. should a special body along the lines of the Textiles Surveillance Body be set up?
- (b) Should any multilateral safeguard body deal with the justification for safeguard measures at the time of their implementation?

11. Compensation and retaliation

- (a) Is compensation appropriate in safeguard actions? Are there particular situations and circumstances in which it may or may not be appropriate?
- (b) Should retaliation continue to be determined solely by the affected countries, or should it be limited in its use to particular circumstances? Should it be subject to multilateral surveillance?

- (c) How is the special situation of countries which trade in a limited number of products to be accommodated since it is difficult for these countries to obtain suitable compensation or to retaliate?

12. Developing countries

- (a) To what extent have the relevant provisions of Article XXXVII been taken into account by developed countries in considering and taking safeguard action against imports from developing countries?
- (b) Is it feasible and appropriate to provide special and more favourable treatment to developing countries in the area of safeguards? Should these countries be automatically excluded from safeguard action except in special circumstances?
- (c) How might the special situation of the least developed among the developing countries be taken into account?
- (d) Is it necessary to have any special rules in cases where the developing countries themselves resort to safeguard action? Should, for instance, some of the rules governing the general application of safeguard action be waived in their case?

13. Relationship between Article XIX and Article XXVIII

What is the relationship between Article XIX and Article XXVIII? Has resort to Article XXVIII reduced the use of Article XIX?

14. Bilateral arrangements

- (a) Should existing intergovernmental bilateral safeguard arrangements, e.g. those providing for or giving the right to introduce import restrictions and/or "voluntary" export restraints, be absorbed in the multilateral system?
- (b) Should bilateral safeguard arrangements to which non-governmental bodies are parties be covered by the multilateral system?