

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

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Multilateral Trade Negotiations

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STATEMENT OF UNITED STATES REPRESENTATIVE ON 4 MAY 1976

The following statement was made by the representative of the United States on 4 May 1976 on questions (a) and (b) of the list set out in paragraph 5 of MTN/SG/3.

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This group spent most of its last meeting in a reasonably detailed examination of specific elements of a safeguards mechanism - and related operational questions - with a view to identifying what sorts of improvements might be warranted. In general, we took the framework of Article XIX as a starting point for this exploration of a more satisfactory safeguard mechanism. While the present question was also first on our agenda at that meeting, my delegation suggested that it might more usefully be taken up in detail at a subsequent meeting, since it involves not so much how to improve the present safeguard mechanism, but whether governments might be willing to make a major commitment to use that improved mechanism, in lieu of other less visible or irregular possibilities for safeguard action.

Other delegations, as well as my own, have noted at prior meetings of this group that the present situation is one in which the Article XIX mechanism is frequently by-passed or superseded by resort to measures under other GATT articles or measures to which governments feel the GATT has no relevance. The point was frequently made that these other routes are taken because of imperfections in Article XIX and disincentives for its use. But it is our view that weaker discipline on the use of these other approaches is responsible as well for the non-use of Article XIX.

We and others have mentioned most of these areas of concern at previous meetings. Some of these are directly relevant to the work of other MTN groups and are being or will be discussed there. But they also need to be understood specifically in the safeguard context, as some tightening and supplementing of obligations in these other areas can be important to the achievement of an effective multilateral safeguards system.

One of these related areas is the extent to which governments have bound their tariff schedules in the GATT. While some countries have bound almost all of their tariff schedules, most have bound lesser proportions. Information developed in Group "Tariffs" indicates that only two of the major trading countries have in past negotiations reduced their remaining unbound tariffs to less than 10 per cent of their total tariff lines for all products. As we all know, unbound tariffs can be raised at any time without resort to safeguard or any other international procedures, and these who have any significant number of unbound tariff lines obviously have a ready-made alternative to established safeguard procedures in those cases. It is clear therefore that the level of bindings at the end of these negotiations will be an important factor in the effectiveness of an improved safeguards system.

Another procedure which can serve as an alternative to formal safeguard procedures is the possibility of modification or withdrawal of tariff concessions, without international explanation or justification, during scheduled open seasons under GATT Article XXVIII paragraph 1 - or at any time if the right to do so has been reserved under Article XXVIII:5. Only paragraph 4 of Article XXVIII - the so-called special circumstances provisions - requires explanation and verification of the need to renegotiate a concession; it does, however, provide that opportunity at any time circumstances so warrant. Procedures of Article XXVIII can be used not only to transform temporary action under Article XIX into permanent protection, but also to provide permanent import protection in the first instance, without attempting to handle the situation through temporary relief action under Article XIX. We note that particularly since the Kennedy Round there has been an increasing tendency for governments to reserve their tariff schedules under XXVIII:5, thus retaining the freedom to renegotiate concessions previously granted at virtually any time. While the right to renegotiate a particular tariff concession, when circumstances warrant, has a legitimate place in the GATT system, it seems to us that Article XXVIII as presently observed, and taken as a whole, may constitute too easy an access to additional protection with too little multi-lateral scrutiny in some cases.

In many cases, safeguard objectives can be served by governmental measures which are either recognized to be illegal under GATT articles or which do not clearly fall under the discipline of the GATT. Examples of measures which can be used for these purposes include residual restrictions, voluntary export restraints, variable levies, and minimum import prices. There exists a large number of such measures, and while there may be controversy over whether they are used for safeguard purposes in any individual case, there is a clear relationship between work on all such measures in other MTN groups - for example the sub-group on quantitative restrictions - and the work of the Safeguards Group, a relationship to which

many other delegations have referred in previous meetings. Progress will need to be made on these measures in order to establish the effectiveness and balance of an improved safeguards system.

In addition, there seems to be a growing number of purely inter-industry agreements which provide quantitative limitations of exports or the exercise of price discipline. Although such arrangements are not covered by present GATT provisions, their relationship to the safeguards system is obvious; how they should be dealt with is less clear.

Finally, one further reason why many of these alternatives can be an easier vehicle for safeguard action is the general absence of a requirement that such measures taken be notified, and consulted on in the GATT. As is pointed out in the secretariat study of international surveillance systems, while Article X requires contracting parties domestically to publish details of their trade measures, as well as agreements reached bilaterally, the obligation ceases there. Restrictive measures taken without reference to GATT articles, or increases in unbound tariffs, or measures taken under Articles XI, XX, or XXI, may never be notified, although this is not always the case. On the other hand, contracting parties sometimes notify restrictive measures taken, but without reference to a relevant GATT article, thus removing a basis for verifying in consultations the acceptability of a measure, or lack thereof. Generally speaking, as is noted in the secretariat study - and I quote - "The GATT leaves it to individual contracting parties to collect the facts which they need and requires them to take the initiative if they require further facts or explanations." The result is that affected countries are frequently unaware of the imposition of such actions or unable to find out the exact nature of the restraints imposed, in a timely fashion. The absence of reliable notification, and the ensuing inability to follow up with appropriate consultations, can be a significant hindrance to the conduct of trade. While it is directly relevant to the improvement of the multilateral safeguard system, it has wider implications for the conduct of trade relations and will surely need to be addressed in the course of the multilateral trade negotiations.

In summary, then, there seems to us to be a demonstrated lack of commitment at present to the use of Article XIX when appropriate safeguard action is required. A willingness to recognize and deal with this problem is fully as important as the need to improve the mechanics of the formally constituted multilateral safeguard system under Article XIX. Because many import restraints having effects similar to safeguard actions are being imposed without recourse to Article XIX we believe that there is at present a lack of balance in the operation of multilateral obligations, which some have termed "absence of a comparable footing of commitments".

This lack of balance is evident for example when a country's export markets are restricted by actions which would not have met Article XIX requirements. It is apparent when a country acting in conformity with international obligations under Article XIX is required, unless willing to offer adequate compensation, to face retaliation - while its trading partners face no similar obligations for import restraints with the same effect as Article XIX actions, but taken under other GATT articles or outside the GATT. Third countries whose trade interests may be directly affected, find it difficult to register those interests when they are unaware of the process going on, or when they are unable to demonstrate that interest in terms of present GATT definitions. The problem of lack of balance can also be seen when import relief measures by some countries are taken in accordance with well-established, widely-known procedures while other countries are able to impose restraints without resorting to such open or orderly procedures.

Mr. Chairman, I have gone into all of this at some length in order to emphasize the importance which my delegation attaches to achieving meaningful results in the work of this group, and to illustrate the scope of issues which may need to be dealt with in order to make those results meaningful. Since our own survey exercise of last year in this group demonstrated that less than a third of those safeguard actions even reported were taken under the Article XIX safeguard procedures, it seems clear that whatever procedural improvements may be proposed and accepted in this group must also be supported and accompanied by widespread willingness of governments to accept those improved procedures as the basic agreed approach to necessary safeguard action.