

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/SG/W/11
26 July 1976

Special Distribution

Multilateral Trade Negotiations
Group "Safeguards"

Original: English

STATEMENT OF UNITED STATES REPRESENTATIVE ON 19 JULY 1976

The following statement was made by the representative of the United States on 19 July 1976 introducing his Government's proposal for an improved multilateral safeguard system (MTN/SG/W/11).

I welcome the opportunity to introduce the United States proposal circulated to delegations last week as MTN/SG/W/11. My remarks today will review and amplify some aspects of that proposal.

Discussions in this Group over the past two years indicate that there is a broad preference among MTN participants for international rules providing a more orderly, equitable and transparent application of those safeguard measures which are necessary. Agreement on such rules will be of major importance in encouraging many participants to undertake with confidence the traditional liberalization of barriers to trade which is the premise of these negotiations. In this regard we have tried to be especially mindful of the requirements of paragraph 3(d) of the Tokyo Declaration that our work on safeguards be undertaken with a view "to furthering trade liberalization and preserving its results".

Our proposal, for an international code supplementing Article XIX of the GATT and agreement on certain additional obligations to ensure effective and equitable operation of the code, attempts to address the shortcomings in current practice described in this Group by many delegations, including my own. Put simply, these deficiencies are, first, the evident reluctance of governments to rely on the currently agreed safeguard procedure; and second, the lack of specificity under the current procedures to adequately protect the interests of both importers and exporters.

To meet these problems, my Government proposes that MTN participants work to define the elements of a more carefully structured system and supplementary obligations to assure equity and effectiveness. I would now like to highlight each of the points which we propose for agreement along with the rationale for their inclusion in the total package.

First, the proposed code would apply to all types of measures, including voluntary export restraints, imposed to provide domestic industries with temporary relief from injurious import competition. That is, governments would commit themselves to take a broader and more responsible view of how agreed international norms relate to their imposition of emergency protective measures. One indication of the distance we have to go is the startling fact which emerged from last year's survey in this Group, that the bulk of safeguard actions reported were taken without reference to any GATT Article or obligation.

The second element of our proposal is the provision that when governments apply safeguard measures that are in conformity with the agreed criteria and conditions of the code, they would not be subject to retaliation, nor would there be any obligation for them to provide compensation. However, non-compliance with the agreed criteria and conditions could warrant retaliation. This element of a new system would give importers an incentive to adhere to more closely defined procedures and conditions when they take safeguard action, and would offer exporters stronger guarantees that actions affecting them are of a minimum and temporary nature. Although retaliation and compensation have in fact figured in very few Article XIX cases, the fear of retaliation and the reluctance to assume a compensation bill have given some governments a strong incentive to avoid use of the Article XIX system. Moreover, retaliatory or compensatory withdrawal of concessions tends to encourage the permanence of safeguard actions.

Thus the removal of the compensation/retaliation burden in carefully defined situations should not be seen as a gift to would-be safeguarders, but rather as a new kind of contractual relationship. As noted, failure of code signatories to abide by that contract could warrant retaliatory measures such as those currently provided in Article XIX.

The third element we are proposing is reaffirmation of the basic criterion for import relief measures: an increase in imports of a product that is causing or threatening to cause serious injury to domestic producers of a like or directly competitive product. We have previously noted in this Group that we doubt the utility of trying to define some new set of criteria for taking safeguard measures. Rather, we would stay with the essential requirement of Article XIX. Nor do we see much merit in trying to elaborate the definition of serious injury.

Fourth, our proposal would require public domestic investigations and decisions on safeguard actions, including an examination by an independent body; public hearings where importers and other interested parties could present their views; and a published report of the decision. We recognize the approach we are proposing is not one widely followed at present. In most countries decisions to implement import relief are made administratively, and interested parties are rarely afforded the opportunity to express their views in public hearings. We believe, however, that existence of open domestic procedures can make an important positive contribution to an international system which features expanded notification, consultation and surveillance guidelines, about which we will have more to say in a moment. Such procedures would be fully in accord with the spirit of the GATT and particularly with Articles X and XIX. Moreover, open procedures find precedence in other international undertakings. We do not believe that an open and orderly process for the decision to take a safeguard action will necessarily exacerbate the import problem in the interim. There need be no presumption that public procedures will ultimately result in the imposition of a restriction. Indeed, we believe that open domestic procedures, where all sides of an issue can be presented, have demonstrated their contribution to assuring that only necessary safeguard actions are taken. Also, while disagreements may arise among the governments as to the justification for a restriction, these are more readily discussed and evaluated if there is a clear public record of factors taken into account in reaching the decision.

The fifth element of our proposal is a series of conditions which would govern the imposition of safeguard measures under an improved system. These conditions would help ensure that safeguard actions are temporary measures imposed to give the domestic producer time to adjust to increased competition, rather than measures to protect that producer indefinitely. These conditions would be both a discipline on the importer and an assurance to the exporter that other rights and obligations of the proposed code are worth undertaking, in light of that improved discipline. The conditions we have specified are the following:

- The duration of safeguard measures would be limited to a specified time period.
- Import relief would not be reimposed unless a specified time period had elapsed since the original relief had been terminated.
- Import relief would have to be phased down to the extent feasible during the period of such relief as a spur to progressive adjustment of the industry.
- Any quantitative restrictions imposed would have to permit importation of a quantity or value of the article which was not less than what was imported into the country during the most recent representative period.

- Safeguard actions should be accompanied by efforts of the domestic industry to adjust.

Regarding the last of these points, it is our view that government-sponsored adjustment assistance should not be a prerequisite for safeguard action. However, we think it is quite reasonable that governments taking safeguard actions be prepared to communicate the nature of the adjustment efforts, whether private or government-sponsored, and to describe how whatever adjustment process is at work will contribute to the removal of the safeguard restriction.

Sixth and seventh, our proposal deals with notification and consultation. We believe it is feasible and appropriate - especially in light of the requirements of Article XIX - that governments give prior notification of the intent to impose import relief except in rare situations where this is not possible. Such notification should come at some minimum specified number of days prior to adoption of the measure.

Once notified, the measure should be the subject of consultation by the initiating government with any affected country so requesting, under the discipline of specified time limits as well as other predefined procedures. Such consultations should be open to third countries potentially harmed by trade diversion from the imposition of such measures, whether they are importers or exporters of the affected product. In the exceptional cases where consultation before the action is not possible, consultation should occur promptly after the emergency action is taken.

The eighth element of our proposal is establishment of a standing committee, composed of several signatories to the code, which would facilitate the smooth functioning of the improved safeguards system. This monitoring committee might serve a number of functions, some of which are listed in our paper. It would be important in any case that the committee be able to operate on a continuing and timely basis, to give code adherents some assurance that problems will be addressed rapidly if they do occur.

Point nine of our proposal concerns the resolution of disputes. We see this as one of the key requirements for improving the safeguards system, in the broad sense of both avoidance of disputes and resolution of those which occur. In that sense a whole-hearted commitment to notification, consultation, and monitoring procedures will be an important prerequisite. As a starting point for this work, we have found the background papers produced for this Group by the GATT secretariat on surveillance and dispute settlement to be most useful discussions.

Under the system we are proposing, we would expect most differences of opinion regarding conformity of measures taken to the agreed criteria and conditions would be resolved in the consultation process, as is traditional in

GATT proceedings. Where this is not successful, the monitoring committee we have proposed would conduct an inquiry regarding the basis for the dispute and could give advice and recommendations to the parties involved. In the process of that inquiry, any party to the disagreement could ask for review of the facts and application of code provisions to the case by an independent advisory body to the monitoring committee. It would be up to the monitoring committee to develop appropriate recommendations taking into account the conclusions of the advisory body. This process would help to form the basis for a judgment by the parties as to what actions, including the possibility of retaliatory measures would be legitimate and appropriate to resolve the matter. Time-limits would provide additional discipline to this dispute resolution process. In all of this we think participants have an interest in procedures which strike an acceptable balance between assurance of impartial review of the issues and flexibility to shape a satisfactory solution. We urge, therefore, that delegations give further thought to more effective procedures for the management of trade disputes.

In introducing the tenth element of our proposal, I would like to note my Government's view that each of the preceding elements I have described, and the system they create when taken together, deal substantially with many of the safeguard objectives expressed by developing countries in the Multilateral Trade Negotiations - both in proposals which have been tabled and in comments made at meetings of this group. I have in mind Brazil, Nigeria, Pakistan, Mexico in particular. Broader coverage of the system; a workable basis for dispensing with retaliation; injury requirements; public procedures; encouragement of adjustment through limited, degressive safeguard measures which do not roll back exports; prior notification and consultation; a standing monitoring body; and assurance of equitable resolution of differences have all been endorsed by developing country spokesmen on various occasions.

We believe our proposal is responsive to all of these objectives. We would not assert that we can accept developing country proposals precisely as put to us in the past, or that we have been able to respond to every point; yet we believe that the elements mentioned and those which follow would comprise a substantial improvement over the present safeguards system, an improvement of particular benefit to developing countries with its emphasis on temporary measures and a more equitable approach to the safeguard problem. In our judgment getting the basic design of the system right will be of as much or more long-run benefit to developing countries as the elaboration of special and differential provisions within that system to favour developing countries.

If the system itself is designed to keep safeguard measures to the minimum necessary, in scope and duration, the opportunities for differential treatment are necessarily somewhat limited. As my delegation has noted on previous occasions, we cannot subscribe to the principle of blanket exemption for any country, developed or developing, from the application of all safeguard measures, since the

basic rationale for safeguard action is the legitimacy of temporary protection for domestic producers suffering injury. This is not to be taken, however, as a denial of the special problems that safeguard measures can pose for developing country exporters. Thus, we are specifically proposing that the basic design of the improved safeguard system normally permit, in accordance with agreed criteria, that developing country signatories who are small suppliers or new entrants to a market be afforded continued market access, with moderate growth, for their exports of products which are subject to safeguard actions. That is, more favourable treatment than would be provided generally by the system we are proposing. We believe it appropriate to specify that this provision would no longer apply to individual developing countries when they achieved some further level of economic development.

The final four elements of our proposal are aimed at establishing a broader range of obligations to ensure the effective and equitable operation of the safeguards mechanism created by the proposed code. These obligations would go somewhat beyond the traditional compass of safeguards, to deal with those alternative escape routes by which the designated safeguard mechanism can be and has been avoided in the past. Obviously some of the work on these obligations will need to be carried out in other MTN groups. But their significance to safeguards is direct and it will be essential that these obligations, wherever they are negotiated, be accepted at least by signatories to the proposed safeguard code.

The rationale leading to these supplementary obligations was the subject of much of our discussion at the May meeting of this group. For economy of presentation in these remarks, I shall only briefly describe the reasoning behind the final four points in the United States proposal. We have asked the secretariat to circulate my delegation's statement at the May meeting of the Safeguards Group as further background.

First, we propose that governments undertake an obligation to notify and consult in the GATT on the imposition of all trade restrictive actions, whether taken under Article XIX, under some other GATT article, or without reference to any GATT provision. The rationale for the restrictions and any specific GATT Article being invoked should be identified. This proposal aims at correcting the current situation in which many restrictions, whether justifiable or not, are never notified to the GATT. Aside from the unwarranted burdens to exporters and importers who are not informed of restrictions in a timely manner, this situation increases the possibility of by-passing established safeguards procedures when there is a pressing need for action. Also, notification without citation of a GATT provision removes an important basis in consultations for evaluating the justification for an action taken.

Second, we are proposing that governments agree to bind all tariffs at the end of the Multilateral Trade Negotiations. There is at present a wide disparity in the degree of bindings undertaken by GATT members, with a resulting imbalance in obligations assumed. Some countries, even those with a substantial number of bindings, still have significant opportunities for increasing protection rapidly, and without international scrutiny or justification, by raising unbound tariffs. As we observed at the May meeting, this situation provides for some countries a ready-made alternative to regular safeguard procedures.

Third, we are proposing that governments agree to forego use of periodic open-season provisions for tariff renegotiation under Article XXVIII as well as reservation of the right to renegotiate at a later time during the three-year period, under Article XXVIII, paragraph 5. We think it is reasonable for governments to rely on paragraph 4 of Article XXVIII, the so-called special circumstances provision, for those tariff renegotiations that may be necessary. While this provision does require GATT authorization to enter into negotiations, we do not believe that would be an unreasonable hindrance to national objectives. It is our view that this obligation would increase the stability of tariff schedules and insure that governments do not unnecessarily negotiate permanent protection in lieu of temporary relief under the proposed safeguard code. Moreover, it is consistent with the objective of providing reasonable opportunity for international scrutiny and comment on a governmental decision to raise the level of protection.

Fourth, we are proposing that governments agree to discourage enterprises, private as well as public, from pursuing policies and in particular entering into agreements to restrain import competition. There exist a number of such arrangements, which serve safeguard purposes but which - being non-governmental agreements - fall outside current GATT provisions. It is clear that governments in many cases have an opportunity to influence decisions to enter into or refrain from such agreements.

Mr. Chairman, that concludes my remarks on the elements of our proposal. I stress that it should not be interpreted as a proposal either for relaxation or tightening of the safeguards system, but rather a restructuring and elaboration of that system to provide more assurance of stability to exporters and importers alike. Of course, the effectiveness of an improved safeguards system will also be importantly affected by the outcome of other aspects of the MTN. As we have noted in our written proposal, at a later stage it will be necessary to examine the extent to which existing quantitative and other restrictions have been dealt with, to verify that sufficient balance in rights and obligations has been achieved to permit the improved safeguards system to operate equitably.

In closing, I would emphasize that while this is a negotiating proposal, it is a serious and carefully considered package which has been developed in full consultation with our domestic advisory bodies. We firmly believe MTN participants will be able to reach agreement on significant improvements in the safeguards system, and hope that our proposal can make a major contribution to that process. We look forward to receiving and considering comments from other governments on our proposal and others tabled in this Group. While we were unable to circulate our proposal substantially before this meeting, we would welcome any preliminary reactions delegations may have at this time. We anticipate more considered views and an extended discussion at the next meeting of this Group, which we hope can be scheduled for mid-autumn.