RESTRICTED

MTN/SG/W/17
4 November 1976

Special Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Safeguards"

Original: English

STATEMENT BY THE REPRESENTATIVE OF CANADA ON 27 OCTOBER 1976

The following statement was made by the representative of Canada on 27 October 1976.

I would like to begin by setting out several basic considerations and then proceed to offer some comments on the proposal tabled at the last meeting of this Group by the delegation of the United States.

The work in this Group is taking place on the basis of the Tokyo Declaration. Delegations will recall that that declaration enjoins us to undertake our work in this Group "with a view to further trade liberalization and preserving its results" We should not lose sight of that objective. We must ensure that the security of concessions which are bought and paid for in this round of trade negotiations and which have been negotiated in earlier rounds are not eroded through the inappropriate use of safeguard action. On the other hand, it is necessary to provide an appropriate mechanism whereby contracting parties can in emergency situations take temporary measures to protect their domestic producers from serious injury. I would also like to recall that my delegation has set out in earlier meetings a number of considerations and comments which should be borne in mind as our work proceeds.

At our last meeting the delegation of the United States proposed negotiation of a code to supplement the provisions of Article XIX and set out a number of elements which that delegation considered should be included in such a code. I would like to make some general comments on the American proposal and then to move into a more detailed examination of some of the proposed elements.

As we see it, there is a close relationship between the American proposal that safeguard action not be subject to retaliation if the criterion and conditions of the system are met, and two packages of elements that follow in their paper. The first package of elements relates to the criterion and conditions under which safeguard

measures could be applied. Clearly in the type of system being proposed by the United States, these elements are of critical importance and would need to be examined very carefully. By conforming to these elements a contracting party would no longer be subject to the provisions of Article XIX:3 which provide for suspension of concessions. It is the view of my delegation that in a number of cases this provision of Article XIX has been important in deterring contracting parties from taking safeguard action which may not have been fully justified. The second package of elements relates to the procedures for notification and consultation, the surveillance of the system and the settlement of disputes. Because so much would hinge on determining whether or not a contracting party had met the criterion and conditions of the system, these elements would assume particular importance.

A second general comment which I would like to raise in connexion with the American proposal is that it is silent on the question of the selective application of safeguards. My delegation is of the view that safeguard measures should continue to be invoked only on a non-discriminatory basis.

A third comment on the American paper is that it does not take into consideration the particular problem in cross-border trade in horticultural products and other agricultural products to which we have referred in past meetings of this Group, and indeed during the preparatory phase for these negotiations. I might briefly elaborate on this problem. On several occasions the Canadian authorities have resorted to Article XIX action to prevent serious injury being caused to domestic producers of certain horticultural products such as strawberries and sweet cherries. Such action has been necessitated because of the particular effect of seasonal or climatic factors on the production and trade of these products in North America. Such action has not been taken on a frequent or regular basis but has been resorted to only as a result of abnormal conditions in the market. In cases where the Canadian authorities have taken safeguard action in connexion with trade in such products, the action has remained in effect for a short period of time only. In such situations the concept of adjustment is really rather irrelevant and we have argued that in cases where the parties agree the action was appropriate under Article XIX, compensation is not required and retaliation is not warranted. In the course of our work in this negotiation, we would like to establish an agreed arrangement for dealing with this problem which is consistent with the general provisions of the safeguard system.

I would like to turn now to some more detailed comments and questions on the various elements of the proposed system set forward by the delegation of the United States.

First, it is suggested that the code should bring within the new system all types of measures, including voluntary export restraints, imposed to provide domestic industries with temporary relief from injurious import competition. We would be interested in hearing in some more detail from the American delegation

how this would be accomplished and in particular what measures in addition to voluntary export restraints might be brought within the system. In the case of voluntary restraint agreements, would it be the intention of the American delegation that such arrangements would maintain their existing form in the new system or would take the form of traditional Article XIX action?

Another element of the American proposal would provide that measures taken in conformity with the criterion and conditions of the code would not be subject to retaliation. I have referred earlier to the importance my delegation attaches to the provision of Article XIX:3 and to the relationship between this element in the proposal and two other packages of elements. It would be essential under the sort of system envisaged in the American proposal to ensure that disputes were resolved fairly and equitably and also promptly; otherwise there would be a real danger that major countries could abuse the system either by failing to meet the criterion and conditions of the system but while claiming to do so, or by failing to conform and offering to pay compensation rather than working towards removal of the safeguard measure. There must be an assurance that safeguard measures are truly temporary if the results of trade liberalization are to be preserved.

The first package of elements I referred to above related to the criterion and conditions under which safeguard measures could be applied. With respect to the criterion for taking action, the delegation of the United States has proposed "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 note that the American proposal does not contain the ideas of "unforeseen developments" and "under such conditions" which are necessary criteria for taking action under the provisions of Article XIX. In the view of my delegation, these criteria should be retained in any new safeguard system. With respect to the concept of "serious injury", my delegation is of the view that in our work in this Group an attempt should be made to define with more precision what is meant by this term. One way to go about this might be to watch the work in the sub-group dealing with subsidies and countervailing duties to see what progress is made in the definition of the concept of "material injury". Clearly the definition of "serious injury" would have to reflect an appropriately greater degree of damage than the concept of "material injury".

The American proposal set out five conditions governing the imposition of safeguard measures. The first condition would be that the measure would be applied for a limited period of time. We would be interested to hear from the American delegation what period of time they would think appropriate. My delegation considers that the period of duration envisaged in the Trade Act of 1974 is too long. There would be a very real danger that the outer time-limits allowed for safeguard action would become the rule. If a contracting party finds it necessary to provide protection for its domestic industry for such a long period of time, it might be more appropriate to have recourse to the provisions of Article XXVIII.

The second condition proposed by the delegation of the United States was to the effect that there should be a delay before a safeguard measure was reintroduced. If it proved necessary to reintroduce a safeguard measure a short time after it had been used the first time, it would seem that the problem is perhaps of a longer term nature and that a more appropriate course of action might be to renegotiate the concession under the provisions of Article XXVIII.

The third condition provided for degressivity. If the measure were of a truly short-term nature, the question of degressivity would not seem to be relevant but this idea warrants further study.

The fourth condition was that any quantitative restriction would have to permit importation of a quantity or value of the article which was not less than that which was imported into the country during the most recent representative period. This concept of no rollback would seem to be a useful addition to the Article XIX system. We would be interested in the views of the delegation of the United States as to whether they would envisage this provision applying to cases where the safeguard measure used was not a quantitative restriction but a surtax or some other form of import charge.

The fifth condition proposed was that safeguard actions should be accompanied by efforts of the domestic industry to adjust. In general terms, if safeguard measures are to be temporary, it may well be appropriate to undertake what adjustment is necessary in order to permit the removal of the safeguard measure; however, as I have indicated earlier, my delegation is of the view that in certain situations involving cross-boarder trade in horticultural and other agricultural products adjustment is manifestly irrelevant. And, to the extent that Article XIX is used for genuinely short-term emergency situations, adjustment is perhaps not so important a consideration.

It is clear that the criteria and conditions in the American proposal are of great importance because of the rôle which they would play in determining whether or not a contracting party could be subject to "retaliation", and consequently in determining to a large extent the frequency and ease with which safeguard measures could be applied.

The second package of elements I referred to above relates to notification, consultation and the settlement of disputes. In the view of my delegation the safeguard system should provide for notification and consultation as Article XIX does now. In this regard it is not clear why the proposal of the United States delegation holds out the possibility that action might be taken before notification. Article XIX does not provide for this eventuality although in practice notification to the Contracting Parties has often tended to follow the action. On the question of consultation the United States delegation has proposed a fixed time-limit for the carrying out of this procedure. My delegation continues to be of the view that the system should retain a requirement for prior

consultation except in critical cases as described in the third sentence of the second paragraph of Article XIX. For such critical cases it might well be possible to improve the system by building in deadlines.

The Canadian delegation considers that there should be appropriate procedures for multilateral surveillance of the safeguard system and effective procedures for the resolution of disputes. We have suggested procedures for dealing with these questions elsewhere in the MTN, for instance in the sub-group on Standards and in the Group Sectors and my delegation will have more to say about this as our work advances. We would not want to place the prime responsibility for resolving disputes in the hands of an international body on which "several" of the adherents to a safeguard code would be represented, as has been suggested by the delegation of the United States. We have argued that the safeguard system should be equally effective for all countries large and small. Under the American proposal it would seem likely that the countries which were represented on the monitoring committee would have a better opportunity of making the system work to their own advantage. In the view of the Canadian delegation, there should be provision for a panel of independent individuals who are experienced in the trade policy field and who would be selected by the Director-General in accordance with established GATT practice. This panel would be given definite functions in the area of surveillance and dispute settlement. We are concerned that a body on which only some of the adherents to a code were represented would bias the system in favour of those adherents who were on the body. It would be easier for these countries to take safeguard action and harder for those who were not represented on the body to protect their interests.

The American delegation also proposed there be "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". It is not clear to my delegation that this system, if universally adopted, would reduce the frequency with which safeguard action is resorted to. Furthermore, we are concerned that once an independent body has taken a decision governments would be reluctant to reject its advice particularly if that independent body had recommended protective action. In introducing the proposal at the July meeting of the Group, the representative of the United States said that in most countries decisions to implement import relief are made "administratively". We are not clear as to exactly what was meant by this term. In Canada as has been described earlier in the work of this Group, decisions to resort to safeguard measures are taken after careful examination by the senior policy officials concerned and only after consideration by Ministers concerned, often in full Cabinet. In reaching a decision Ministers take into consideration a whole range of questions including the effects of potential action on Canada's trade and economic relations with other countries. It is not appropriate to describe such a process as being merely "administrative".

The American proposal also called on adherents to a code to assume a set of "broader obligations". It seems to us that what the American delegation has done here is set out a number of linkages which they have made between the safeguard negotiation and other areas of this negotiation. I would like to comment on these proposals briefly. One proposal called on all signatories to a safeguard code to bind all their tariffs at the end of this negotiation. My delegation considers it very unlikely that the Canadian authorities would be prepared to accept such an obligation at the end of this trade negotiation; in any event this is a matter which it might be more appropriate to discuss in the Tariff Group. The American proposal also called for notification and consultation procedures for all trade restrictive measures. My delegation is not prepared to engage in such a broad ranging exercise in the course of work in this Group, although it might be appropriate for us at some point in our deliberations to undertake to ensure that no safeguard action as such escaped the notification and consultation procedures provided for in a safeguard system. The American delegation also called for abolition of the "open season" provisions of Article XXVIII. My delegation is not convinced that the abolition of these provisions would reduce the frequency with which contracting parties resort to Article XXVIII, nor do we regard resort to Article XXVIII, in cases where a contracting party finds a particular level of tariff protection no longer sufficient, as inappropriate. Finally, the United States delegation proposed that "governments should agree to discourage enterprises, private as well as public, from pursuing policies and entering into agreements to restrain import competition". My delegation would be interested in learning what sort of policies and agreements the United States delegation was thinking of in putting forward this proposal.