

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

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Multilateral Trade Negotiations  
Group "Safeguards"

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UNITED STATES COMMENTS ON DEVELOPING COUNTRY SAFEGUARD  
PROPOSALS, 14 FEBRUARY 1977

The United States has commented before on these proposals, in particular at the November 1975 and July 1976 meetings of the Safeguards Group. The negotiating proposal which we presented at the July meeting was prepared in the knowledge of all developing country proposals now on the table in Group Safeguards and thus embodied our general response. At that time, many delegations pointed out the complementary nature of developing country proposals and the United States proposal. Many elements and concepts are similar, but not identical; and there are some key differences. But we believe there is a basis for negotiation.

We are addressing, specifically, the earlier proposals from the delegations of Brazil, Nigeria and Pakistan and the more recent note from the delegation of Mexico. We have observed that a number of elements and concepts are found in all of those proposals. Our remarks will deal with some of the main headings, in some cases with specific reference to my own delegation's proposal.

Non-application of safeguards against developing countries

All four proposals include this as the basic rule. We have stated in the past why this blanket exemption concept was unacceptable to the United States. Three of the four proposals would make an exception for "compelling and exceptional circumstances". We are unclear on the compelling and exceptional circumstances to which the proposals of Brazil, Nigeria and Pakistan refer, but we believe our proposal for improving the multilateral safeguard system can be taken to confirm our view that safeguards should only be applied in exceptional circumstances and that the reasons would be compelling.

Prior notification/consultation

All four proposals contain this concept. We agree with the basic premise, although we prefer the retention of the "critical circumstances" provision (which seems to be included in the Nigerian proposal). It is the purpose, content and forum for such consultations which will presumably be the subject of negotiation here.

We note that Brazil and Pakistan have made proposals regarding content of consultations, and that Brazil, Mexico and Pakistan have proposed consultation in a multilateral body prior to implementation of a safeguard measure. We are not prepared to accept the idea that prior multilateral authorization should be required, since the right to take a temporary action to prevent or remedy serious domestic injury must remain a national prerogative. Nor are we able to agree with the Mexican recommendation that where prior consultation with developing countries is not feasible, they should be exempted from the safeguard action.

I want to emphasize, however, that any such cases - where prior notification/consultation is not affected - should be a rarity, certainly much less frequent than is now the case, and our proposal is designed to achieve that. Moreover, United States practice under Article XIX affords ample opportunity for consultation, both bilateral and multilateral, in advance of the taking of an action. In almost all cases where the United States has used Article XIX, there has been prior notification and consultation (see MTN/3D/1), which is rather in contrast to other usage of Article XIX.

#### Justification of circumstances

All four proposals stress the need for a full and complete justification of the circumstances surrounding the safeguard action. We share that view, and have underscored the importance of adequate domestic procedures to develop the relevant facts and arguments. There will always be many points of view, sometimes opposing but no less valid, which must be brought to bear on the decision regarding a safeguard action. An adequate domestic institutional approach has its place along with international institutions in this regard, since the domestic procedures are operating during the phase when no tentative decision for action has yet been taken. Guarantees of opportunity for full participation by all affected parties are essential during this phase, to lead to an equitable result on both domestic and international grounds.

#### Compensation

Three of the four proposals include an obligation for developed countries to compensate developing countries when safeguard action is taken against the latter. In principle, we cannot agree with this as an obligation, nor is there one under the current Article XIX system. While neither the current system nor the United States proposal excludes the possibility of compensation in individual cases, we believe that this practice works against the prospect for an improved safeguard system in which measures taken are truly temporary, degressive, and possibly tailored to treat developing countries more favourably. Moreover, compensation as we understand it in the GATT, i.e., temporary increased market access for other exports of those countries affected by the safeguard action, could well have a disproportionately burdensome effect on developing countries when it is phased out following the termination of a safeguard action. Our doubts persist.

### Duration of measures

We agree with the principle as enunciated in the Mexican note, that safeguard measures should be temporary. The practical question is how long? Three of the four developing country proposals suggest a maximum of one year, but we seriously question whether this arbitrary period would be appropriate in all cases. There should, however, be definite limits.

### Extent of measure

We agree with the principle in all four proposals that the level of temporary protection established by a safeguard action should be related to an historical norm. In the Mexican note (if we understand it correctly) this is put somewhat differently in terms of a "minimum import level". The question for negotiation is how to determine the level below which imports will not be rolled back. We think the suggestion in the other three developing country proposals, to use the actual level of imports at the moment of introduction of a safeguard, is not likely to work in most cases. The concept we think is equitable to both foreign and domestic interests is that of "recent representative period", perhaps further specified through negotiation.

Also, we note again that the "no-roll back" approach is more difficult to work with in the case of safeguard actions which are essentially tariff or fixed surcharge measures, the approach most often used by my own Government in Article XIX actions. In those cases, the ensuing effect on trade flows can only be estimated. In both kinds of cases - tariff-type measures and quantitative measures - the principle of degressivity or progressive phase-out of the measure, is one we are on record as endorsing.

### Adjustment

All four proposals include the concept of mandatory domestic adjustment measures, which my delegation has been on record as opposing since last July. We did, however, propose at that time that safeguard actions should be accompanied by efforts of the domestic industry to adjust. Generally we think a focus on adjustment is appropriate, and our proposal encourages this through time-limits, degressivity, etc. We recognize our Canadian colleague has suggested this concept may not fit in all circumstances.

In any case, it is our view that the question of adjustment deserves appropriate examination in the context of any safeguard action. Even now it is one of the aspects which by statute must be considered in my Government's domestic procedures for taking escape clause action. Moreover, the criteria in our statutes make adjustment assistance more easily available than the alternative of restrictive

import relief. The concept of anticipatory adjustment measures, however, which is found in all four developing country proposals, is not one which lends itself to my country's economic and political system.

#### Surveillance

At least one of the developing country proposals included a continuing multilateral surveillance body (and this may have been implied in the others). We generally agree with this idea and have proposed that there be a special committee established to assure continuous and effective monitoring of actions under the improved multilateral safeguards system. What must be negotiated are the appropriate functions for such a body and the division of responsibilities between it and other institutional elements of an improved multilateral safeguards system.

As noted earlier, we do not believe a prior approval function is appropriate for such a body. On the other hand we do not think it should be passive, or ceremonial, or incapable of rapid and expeditious performance of its functions. All of these considerations bear on the kind of arrangement we have recommended in the United States proposal, which we hope to specify in substantially more detail in the near future. A productive negotiation will require that other participants in this Group be prepared to do the same regarding their views on this question.

#### Differential application of measures

All of the proposals envisage, in one way or another that safeguards measures applied to developing country exports would be more generous or less burdensome than what is done with respect to other countries. We have proposed in conceptual terms that this be a part of an improved multilateral safeguards system. Our proposal makes a distinction between developing countries who are small suppliers of the product subject to safeguard action (or are new entrants to the market), and those developing countries which do not fit that category. In practice, most developing countries would fall into that special group; but in those less frequent cases where safeguard action is necessary and a developing country is a major supplier, we doubt it is possible to offer special and differential treatment in the form of more favourable market access. Nevertheless, we recognize there may be other possibilities which can be examined in a more concrete phase of these negotiations.

#### Safeguards by developing countries

We note that two of the four proposals include the idea that special provisions are needed in order to facilitate application of safeguard measures by developing countries. We are frankly unclear as to what problems exist in this respect, or of what proposals the delegations of Brazil and Pakistan have in mind. However, we are under the impression that these questions are likely to be taken up in the Framework Group, which meets next week, and do not need to be pursued here.

That is what we can say for the moment regarding the developing country proposals now on the table, recognizing that the work of this Group is still proceeding at a certain level of generality. As we suggested before, a productive negotiation will require that all delegations who have taken a position be prepared to make concrete contributions spelling out what they have in mind, so that our understanding of the disagreements can be sharpened and the areas of consensus deepened. We expect to make such contributions in the future and we hope that others will do the same.