GENERAL AGREEMENT ON
TARIFFS AND TRADE

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STATEMENT BY REPRESENTATIVE OF UNITED KINGDOM ON BEHALF OF HONG KONG ON 28 JUNE 1977

Notification, Consultation, Surveillance and Dispute Settlement

Hong Kong's views on the first three of the four subjects covered by this item have been expressed in general terms in this Group on a number of occasions. My statement now is an amplification of what we have said before, with some comment also on particular points which have been made by other speakers.

On notification we share the view that the provision for obligatory prior notification should be retained unchanged, as it now stands in Article XIX:2; and that it should be written into any Code that is agreed so as to apply to all forms of safeguard action covered by the Code.

In saying "as it now stands in Article XIX:2", we have in mind particularly the point to which attention has been drawn that, while Article XIX:2 provides for omission of the process of prior consultation in "critical circumstances, where delay would cause damage which it would be difficult to repair", it makes no provision for omission of prior notification in such circumstances. Prior notification before action is taken is already obligatory in all cases of action pursuant to the provisions of Article XIX:1, even if the obligation has not always been observed. We believe that this obligation should not be weakened in a safeguards code. And so we do not agree with the United States proposal that prior notification might be waived "in emergency situations". It seems reasonable to us to suppose that in any situation, however urgent, it should be possible to give at least some days notice of intention to take action without in practice thereby causing any real deterioration of the position.

We are, after all, here to deal with situations of trade, not of war.

But we do agree with the United States delegation in their suggestion that to specify a minimum number of days of notice required would be an improvement to the present provision.

As regards consultation, we have already expressed the view on behalf of Hong Kong that the present Article XIX.2 obligation for prior consultation should be retained and carried through into a code. We have noted that the United States proposal for a code provision in one respect widens the present Article XIX:2 provision and in another respect weakens it; that is to say, it widens it in extending the right to consult from countries "having a substantial interest as exporters" to "any country having a trade interest affected by this measure, including countries potentially affected by trade diversion" whether as exporters or importers; and it weakens it in changing the circumstances in which prior consultation could be waived from "critical circumstances, where delay would cause damage which it would be difficult to repair" to "exceptional circumstances, where prior consultation was not possible" for any, undefined reason.

Before touching on the substance of these two points, I should like to say that, on the assumption that the wording of Article XIX will be retained unchanged, it seems to us that there would be risk of legal difficulties and of difficulties of interpretation in future if the provisions of a mandatory code and of Article XIX were substantively different. The validity of provisions of the code, which one might describe as "subsidiary legislation", could then be open to question if they went beyond those of the Article which is the basic legislation; it might be claimed that the code was ultra vires in exceeding its parent ordinance.

As to the substance of the first point, Article XIX:2 at present requires in effect that an exporting country be able to establish that it has a substantial export interest before it can claim right to be consulted about proposed Article XIX action. The provision proposed by the United States would remove this requirement in the Code. The definition of "substantial interest", in the context of Article XXVIII although not specifically of Article XIX, is treated in Annex I to the General Agreement; Note 7 to paragraph 1 of Article XXVIII says, in brief, that the term is intended to be construed as covering only countries with a significant market share in the import market concerned. For Hong Kong's part we have no difficulty of substance with the proposal by the United States, although, if it were agreed for inclusion in a code, we should wish to see clear recognition that adherents who were also contracting parties would no longer insist on their rights under Article XIX:2 to limit consultation with exporting countries to those who could establish substantial export interest.

But on the substance of the second point, we find difficulty in the suggestion that the conditions for waiving the obligation of prior consultation should be weakened; that they might be expressed simply as "where it was not possible".

"Impossible" in who's view and on what basis? "Impossible" could in practice be interpreted as "unacceptable to the importing country" for reasons which might be outside the economic field, for example of administrative convenience or of domestic political consideration. We should prefer to see the present "critical circumstances" provision carried through into a code.

We also agree with the suggestion made by the Korean delegation at an earlier meeting that the Group might usefully consider whether or not it is possible to define, or at least clarify further what is meant by "critical circumstances".

We support the United States proposal that time-limits should be established for consultation; and agree with the suggestion of the Canadian representative that the present Article XIX:2 provision might be improved by setting a deadline for the start of consultation when there has been no prior consultation because of "critical circumstances".

On the last subjects in this item, surveillance and dispute settlement, we share the view of others that it is essential for the proper operation of the safeguard system that an effective multilateral surveillance system should be established. We have read and heard with interest the suggestions made as to how this system should function; and we should like to revert to the question when these suggestions have been further developed.