

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/SG/W/45

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Special Distribution

Multilateral Trade Negotiations

Group "Safeguards"

DRAFT INTEGRATED TEXT ON SAFEGUARDS

It is the understanding of the Chairman of Group "Safeguards" that the attached text reflects the present state of thinking of several delegations both from developed and developing countries on those chapters covered by the text.

The text is circulated in order to facilitate further negotiations. It does not commit any delegation to all or any part of the text, nor does it prejudice in any way the negotiating position of any delegation in any area of the MTN or the status of previous proposals relating to safeguards which reflect the position of certain delegations (MTN/SG/W/39, MTN/INF/17 and Add.1 and MTN/W/37). It is understood that all elements of this text are interrelated and that in the light of its further evolution, delegations may wish to propose additional elements or alternative texts.

(It was agreed that the draft preamble would need to be reviewed in the light of the provisions of this Agreement).

DRAFT PREAMBLE FOR SAFEGUARD AGREEMENT

Parties to this Agreement,

Considering that Ministers agreed in a declaration at Tokyo on 14 September 1973 that comprehensive multilateral negotiations in the framework of the GATT should aim, inter alia, to include an examination of the adequacy of the multilateral safeguard system, considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results;

Having concluded as a result of their examination that the application of multilaterally agreed rules to safeguard measures could be improved and their mechanisms more clearly defined;

Recognizing that procedures needed to deal with emergency situations in which any products are imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers are provided for in Article XIX of the General Agreement;

Recognizing, however, that recourse to safeguard measures can have harmful effects on the interests of other countries and desiring to ensure that such measures are not more restrictive nor longer than necessary to prevent or remedy the serious injury or the threat thereof;

Recognizing that safeguard measures should not be used as a substitute for structural adjustment to [changed conditions of fair competition]; [shifts in comparative advantage];

Recalling the provisions of Article XXXVII of the General Agreement;

Desiring that safeguard measures should not constitute an unjustifiable impediment to world trade;

Desiring to ensure that all recourse to safeguard measures be appropriately brought within the framework of an improved international discipline;

Desiring, therefore, to elaborate supplementary rules and procedures regarding the application of Article XIX of the General Agreement, in order to provide greater uniformity and certainty in the implementation of its provisions;

Hereby agree as follows;

GENERAL PROVISIONS

1. The parties to this Agreement agree that safeguard measures may be taken only under the circumstances provided for in Article XIX. In all such cases the parties undertake to observe the requirements set out below which, together with those of Article XIX itself, shall govern the implementation of that Article among the parties to this Agreement.¹

¹The applicability of this Agreement to non-adhering contracting parties is being discussed.

2. The provisions of paragraph 1 shall be without prejudice to the rights and obligations of GATT contracting parties regarding restrictive measures permitted for specified purposes under the terms of other GATT provisions, protocols, and agreements or arrangements negotiated under GATT auspices.²

²It is understood that the term "agreements or arrangements negotiated under GATT auspices" refers to instruments resulting from multi-lateral negotiations convened or sponsored by the CONTRACTING PARTIES (e.g. the Multi-Fiber Arrangement, and non-tariff measure and commodity codes negotiated in the Tokyo Round or other GATT "rounds"), where such instruments expressly permit the taking of restrictive measures in specified circumstances.

CHAPTER 1 - SERIOUS INJURY AND CAUSALITY

1. In the implementation of paragraph 1 of Article XIX, parties to this Agreement agree that safeguard action may only follow a determination by the domestic authorities concerned that imports of a particular product¹ are causing or threatening to cause serious injury to [a major part of all] domestic producers of like or directly competitive products. The determination in all cases shall be made on the basis of positive findings of fact and not on mere conjecture, or remote or hypothetical possibility. In the case of serious injury such a determination shall be made only when imports have increased in such quantities, [or in such quantities relative to domestic production] and under such conditions demonstrably as to [account for the principal] cause [of] serious injury sustained by domestic producers. In the case of threat of serious injury, such a determination shall be made only when imports have increased in such quantities [or in such quantities relative to domestic production] and under such conditions that serious injury, although not yet existing, is clearly imminent.
2. Determination of the existence of serious injury or threat thereof shall be based on examination of objective factors having a bearing on the state of the domestic producers, such as: [development and prospects with

¹A representative of several contracting parties understands that this language refers to imports of a particular product into the territory of a contracting party.

regard to] output, turnover, inventories, market share, profits, domestic prices, exports, domestic employment and wages, utilization of productive capacity, productivity, and investment [, as well as the size of the market]. [No positive determination of the existence of serious injury or threat thereof shall be made where these indicators are not adverse.] The list is not exhaustive, nor can any one or several of the factors necessarily give decisive guidance.

3. It must be demonstrated that imports are the [principal] cause of the serious injury or threat thereof. Injury caused or threatened by other factors must not be attributed to imports. Therefore, the determination of [principal] cause shall be based on an examination of the effect of imports on one hand and on the other hand, all other relevant factors which, individually or in combination, may be adversely affecting the domestic producers [, for example: competition among domestic producers, contraction in demand due to substitution by other products or to changes in consumer tastes, decline in domestic consumption or production, shifts in technology, structural deficiencies or loss of competitive advantage].

4. [(a) The term "domestic producers" shall be interpreted as referring to the domestic producers as a whole of the like products or the directly competitive products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.]¹

¹This paragraph is an alternative to the bracketed language beginning on the fifth line of paragraph 1. It would be for consideration whether language along the lines of Article 4(a)(ii) of the Anti-Dumping Code should be included.

(b) Where two or more countries have reached such a level of integration that they have characteristics of a single, unified market, the producers in the entire area of integration shall be taken to be the producers referred to [in sub-paragraph (a)].

CHAPTER 2 - DOMESTIC PROCEDURES¹

1. No safeguard action may be implemented by a party to this Agreement, unless previously designated governmental authorities, pursuant to domestic procedures previously established and made public, have examined the case in question and determined that the requirements of Chapter 1 have been met. Investigations shall normally be initiated upon a request on behalf of the producers affected [, supported by evidence on serious injury. If in special circumstances the previously designated governmental authorities of a signatory decide to initiate an examination or an investigation without having received such a request, they shall proceed only if they have evidence on serious injury].
2. In examining the case(s), the authorities shall, subsequent to [reasonable public notice] [such notice as may be necessary], afford interested parties an opportunity to present their views and relevant evidence by way of public hearings [or] [and] otherwise, in order to facilitate the development of the fullest possible information upon which the authorities may judge the need for safeguard action. All information provided on a confidential basis shall be treated as strictly confidential by the authorities.

¹Some delegations have expressed doubts as to whether this Chapter is necessary and have reserved their position.

3. If the authorities determine, with respect to the case in question, as a result of their examination, that the requirements of Chapter 1 have been met, they shall communicate to the exporting parties to this Agreement concerned, [other interested parties to this Agreement, where deemed appropriate,] and to directly interested [domestic] private parties the fact of such determination, indicating factors considered, criteria applied and rationale used in arriving at their determination. Such determination shall be made [[public and shall be] available in written form to any interested party to this Agreement and to any interested [domestic] [private] party [upon request], [unless there exist special reasons against doing so]].

[4. Except for good cause determined by the authorities to exist, no investigation for the purpose of safeguard action shall be made with respect to the same subject matter as a previous investigation unless [one year has] [two years have] elapsed since the examination under this Chapter was concluded.]

CHAPTER 3 - CONDITIONS

Safeguard measures should be proportionate¹ to the injury caused or threatened to be caused. Therefore:

- (a) Product coverage of a safeguard measure shall be limited to imports of the particular product or products causing or threatening serious injury, although appropriate allowance may be made for dealing with the possibility of circumvention through, for example, minor design or processing changes or incomplete assembly of component parts.
- (b) A safeguard measure shall remain in force only so long as may be necessary to prevent or remedy serious injury to domestic producers. At the time it takes a safeguard measure, the importing signatory shall stipulate the period of validity of such measure [which initially shall not exceed months]. If the serious injury or threat thereof continues to exist, the safeguard measure may be extended beyond such initial period after notification [and consultation] in accordance with Chapter 5 below.² [The extension shall be on terms [no more] [less] restrictive than those obtaining immediately prior to the extension.] [In no case shall the safeguard measure and its extension(s) total more than [3] [8] years.]

¹The suggestion was made that tariff increases should take preference over quantitative import restrictions or similar measures.

²A number of delegations consider that the extension of any safeguard measure should be subject to prior approval by the Committee.

- (c) [No safeguard measure shall be implemented [by developed countries] with respect to any product which was subject to a safeguard measure within the preceding two years.]
- (d)¹ Safeguard measures shall [to the extent feasible] be progressively liberalized during the period of their application to encourage the adjustment of domestic producers to import competition.
- (e) Safeguard measures shall not [normally] reduce the level of imports below the level in [a] [the most] recent representative period [(i.e. a twelve-month period terminating (...) months preceding the month in which domestic procedures provided for in Chapter 7 are initialled)].

¹Some delegations have proposed the following addition:

Developed parties shall take appropriate policy measures to encourage their domestic producers to adjust out of product sectors in which comparative advantage has shifted in favour of less-developed contracting parties.

CHAPTER 4

CHAPTER 4 bis

CHAPTER 5 - NOTIFICATION, CONSULTATION

1. A party to this Agreement shall, in accordance with paragraph 2 of Article XIX, notify the CONTRACTING PARTIES¹ in writing that it is considering the implementation of a safeguard measure under this Agreement. The notification shall be made as far in advance as may be practicable, [but in any case not less than [20] days prior to the implementation of the measure]. It shall contain all available relevant particulars and details including a precise description of the product in respect of which the measure is to be implemented, the type of measure envisaged, the date of implementation, the expected duration of the measure and the justification for the measure in terms of the requirements set out in Chapter 1 above.

2. A party considering the implementation of a safeguard measure shall be prepared to consult, before the measure is implemented:

- (a) with those parties to this Agreement that have a substantial interest as exporters of the product concerned [or whose trade interests are likely to be substantially affected];
and

- (b) in the Committee upon the request of a party to this Agreement in accordance with the provisions of Chapter 6 paragraph 5 below.

Consultations requested shall begin as soon as possible and no later than thirty days from the receipt of the request.

¹Among parties to this Agreement, notifications to "the CONTRACTING PARTIES" would be referred to the Committee; consultations with "the CONTRACTING PARTIES" would be conducted in the Committee.

[3. In the "critical circumstances" referred to in Article XIX, a safeguard measure may be introduced immediately following notification.

In this case the measure taken will be on a provisional basis [with a maximum validity of [sixty] days] and the party taking the measure shall be prepared to consult immediately as provided in paragraph 2 of Article XIX].

[3. In critical circumstances, where delay would cause damage which it would be difficult to repair, a safeguard measure may be taken provisionally without prior consultation, on the condition that consultations shall be effected immediately after taking such measure].¹

4. When a party implements a safeguard measure it shall promptly file a supplementary notification giving full details concerning the action being taken. It shall promptly notify the CONTRACTING PARTIES² if the measure is modified or discontinued.

5. A party considering the extension of a safeguard measure shall notify the CONTRACTING PARTIES² [] days before its scheduled expiration and shall be prepared to consult as prescribed in paragraph 2(a) and (b) above [, before the measure is extended]. The notification shall provide justification for the extension in terms of the requirements of Chapters 1 and 2 above.

¹This alternative is exactly analogous to the third sentence of Article XIX:2 and should be read in context with the rest of Article XIX:2 which refers to prior notification.

²Among parties to this Agreement, notifications to "the CONTRACTING PARTIES" would be referred to the Committee; consultations with "the CONTRACTING PARTIES" would be conducted in the Committee.

6. Parties to this Agreement shall accord sympathetic consideration to and shall afford adequate opportunity for prompt consultation regarding such representations as may be made by another party with respect to any matter affecting the operation of this Agreement.

7.¹ In conducting consultations provided for in the preceding paragraphs, a party considering the implementation of, or [extension of] [extending]² a safeguard measure shall present, to the extent not already provided in accordance with paragraph 1 above, all relevant particulars and details in writing as far in advance as may be practicable, but in any case not later than [twenty days prior to] the beginning of the consultations. These particulars shall include data relating to:

- (a) demonstration of the existence of serious injury or threat thereof as well as causality in accordance with the provisions of Chapter 1 above;

¹It would be for consideration whether this paragraph should be included as an annex to this Agreement. Several delegations consider that, while the provision of adequate data for consultations is important, this question should be approached in a flexible manner and might be left for further elaboration in the Committee on Safeguard Measures.

²It remains for consideration whether these provisions of this paragraph apply to short extensions of safeguard measures of short durations.

- (b) demonstration of compliance with the conditions provided for in Chapter 2 above;
- (c) in cases where paragraph 3 above has been invoked, demonstration of the existence of critical circumstances, in addition to the data listed in (a) and (b) above; and
- (d) in cases of extension of an action, the period of extension, the justification for the extension, progress made towards the removal of the safeguard measure and, where relevant, towards adjustment of the domestic producers to import competition.

CHAPTER 6 - SURVEILLANCE AND DISPUTE SETTLEMENT¹

Committee on Safeguard Measures

1. There is established within the framework of GATT² a Committee on Safeguard Measures (referred to herein as "the Committee") composed of representatives from each of the parties to this Agreement. The Committee shall elect its own Chairman and shall meet as provided for in this Agreement. The Committee shall carry out the responsibilities assigned to it under this Agreement. The GATT secretariat shall act as the secretariat to the Committee.
2. The Committee may set up subsidiary bodies.
3. In carrying out their functions, the Committee and any subsidiary body may consult with and seek appropriate information, consistently with domestic laws, from any source³ they deem appropriate.

Surveillance⁴

4. The Committee shall meet at least once a year to review the operation of this Agreement.

¹One delegation has made it clear that it is unable to accept the establishment of a Committee, and of more specific procedures for surveillance and dispute settlement in this Agreement, except in the context of an Agreement which contains satisfactory and workable provisions for the selective application of safeguard measures.

²It remains to be considered whether the Committee on Safeguard Measures should report to the CONTRACTING PARTIES.

³It is for consideration whether in practice the Committee and its subsidiary bodies would need to consult or seek information from sources other than the governments of parties to the Agreement.

⁴One delegation was of the view that the Committee should be a compact body like the Committee on Balance of Payments and that its mandate should include making findings and recommendations including disapproving measures found to be inconsistent with the provisions of the Code in the course of the normal periodic review of safeguard measures and not only in the context of specific initiatives or complaints from affected parties.

5. Any party may request the Committee, by written communication to the Chairman, to examine a safeguard measure, which has been notified or which is in force, if the measure is affecting, or is likely to affect, its trade interests [as an exporter]. The Committee shall, on receipt of such a request by the Chairman, meet promptly¹ to conduct the examination requested.

6. Any party maintaining a safeguard measure in force shall once a year, on a date set by the Committee, submit a written report to the Committee with factual data to explain why the measure is still necessary and what progress is being made towards its removal and, where relevant, towards adjustment of the domestic producers to import competition. The Committee shall, on the basis of these reports and other information available to it, review annually all safeguard measures in force.

7. Any party may request the Committee, by written communication to the Chairman, to examine any situation affecting, or likely to affect, its trade interests where it appears another party is not meeting its obligations under the Agreement. The Committee shall, on receipt of such a request by the Chairman, meet promptly to conduct the examination requested.

8. The Committee shall be responsible for resolution of specific questions of interpretation of the Agreement.

¹Except for holiday periods, the word "promptly" in this Chapter means within thirty days, or sooner if possible.

Dispute settlement¹

9. Any party that considers that a benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded by another party or parties, may request, by written communication to the Chairman, that the Committee meet to examine the situation. It is understood that the Committee's examination may cover any safeguard measure which is in force and which affects or is likely to affect the trade interests of another party; or any situation where it appears that a party is not carrying out its obligations under this Agreement. The Committee shall promptly investigate any matter so referred to it and shall make appropriate recommendations to the parties which it considers to be concerned [or give a ruling on the matter, as appropriate].

10. The Committee may disapprove of any suspension of concessions or other obligations, referred to in Chapter 3 [, which it determines to be more than "substantially equivalent"]. Any party with respect to which another party proposes to suspend concessions or other obligations pursuant to Chapter 3 may, by written communication to the Chairman, request the Committee to disapprove of such suspension [if that party considers it to be more than "substantially equivalent"]. The Committee shall promptly investigate the matter and decide whether so to disapprove of the suspension.

¹It is understood that the first stage in the dispute settlement process would be bilateral consultations between the parties concerned.

Note: It is understood that the substance of the provisions contained in the dispute settlement section of an "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance" being negotiated elsewhere will be included in this section of the Safeguard Agreement. Appropriate modifications would need to be made to adapt the provisions to the requirements of the Safeguard Agreement, e.g. to take account of the rôle of the Committee on Safeguard Measures.

Note: It is understood that if a dispute arose regarding the Agreement and between parties to it that the provisions of this Chapter would be used in trying to resolve that dispute. It may be necessary to specify in what way Article XXIII of the GATT might be resorted to [when parties to this Agreement have exhausted the possibilities for dispute settlement under it].

(Note: A number of delegations reserve their position on this Chapter as a whole and consider that it requires further examination in the light of other aspects of the draft Code.)

CHAPTER 7 - RESPONSE TO SAFEGUARD MEASURES

1. Parties confirm that the right of a contracting party to the General Agreement to suspend substantially equivalent concessions or other obligations under Article XIX:3(a) is maintained. If, however, following the consultations described in Chapter 5, a party affected as an exporter of the product concerned to the territory of the party taking the safeguard action agrees that the requirements of this Agreement have been met by the latter party, the affected exporting party [shall] [should normally] [may] refrain from exercising its rights under Article XIX:3(a) of the General Agreement with respect to the suspension of substantially equivalent concessions or other obligations so long as the safeguard action continues to comply fully with the requirements of this Agreement.
- [2. Notwithstanding the provisions of paragraph 1, and the ninety-day limitation prescribed in Article XIX:3(a), if the affected exporting party subsequently has reason to consider that, although the safeguard action in question may have met the requirements of this Agreement, that action has nevertheless had a serious adverse effect on its trade interests, then it would be open to that party, during the period the safeguard measure is in force, to pursue its rights under Article XIX:3(a) with respect to the suspension of substantially equivalent concessions or other obligations. [In such a case, however, consideration of "substantially equivalent concessions"

would be related to the effect of the measure which has been used by the importing party rather than to the amount of the trade covered by the safeguard measure.]]

[3. The party taking safeguard action shall provide substantially equivalent compensation to [developing] parties affected as exporters of the product concerned. In that event, the [developing] parties concerned shall refrain from exercising their rights under Article XIX:3(a).]

CHAPTER 8

CHAPTER 9 - FINAL PROVISIONS¹

[1. All safeguard measures in force notified under Article XIX of the General Agreement by a party and in force the date of entry into force of the Agreement for it, shall be terminated no more than [..... year(s)] from that date unless extended in accordance with the provisions of this Agreement.]

[2. All other pre-existing restrictive measures [subject to] [which would be required to be notified under] this Agreement and maintained by a party at the time the Agreement enters into force shall be notified to the Committee no later than the date of entry into force of the Agreement for that party. Any such measures not so notified shall be terminated forthwith. Measures which are notified shall be terminated no later than [..... year(s)] following the date indicated above unless extended in accordance with the provisions of this Agreement.]

3. The Committee shall examine measures which were maintained before entry into force of this Agreement and which a party proposes to extend under paragraphs 1 or 2 above, in order to determine whether the measures are in conformity with the provisions of this Agreement.

4. Each party to this Agreement shall, promptly following the date the Agreement enters into force for it, notify the Committee of its legislation,

¹One delegation emphasizes that existing discriminatory bilateral safeguard arrangements should be abolished under a new safeguard system, and that existing discriminatory quantitative restrictions should be eliminated immediately.

regulations and administrative procedures to be used in the implementation of this Agreement. Thereafter, each party shall notify promptly the Committee of any change in such legislation, regulations and procedures. These legislations, regulations and administrative procedures of each party shall be open to examination by the Committee pursuant to Chapter 6 above.

Note: Consideration is being given to provisions governing the use of automatic licensing and similar surveillance measures for safeguard-related purposes.

Note: Additional provisions remain to be developed.