

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

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Multilateral Trade Negotiations

Group "Safeguards"

## SAFEGUARDS

### Note by the Secretariat

At its meeting on 9 April 1979 the Group invited the secretariat to prepare, on its own responsibility, a working document which might be taken as a basis for further consultations and negotiations (MTN/SG/12, paragraph 4). The present document has been prepared by the secretariat in response to the Group's request. Neither its content nor the way in which the issues have been presented commit any delegation.

PREAMBLE

Parties to this Agreement (hereinafter referred to as "Parties"),

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 and shifts in comparative advantage;

Recalling the provisions of Article XXXVII of the General Agreement;

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 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.
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.<sup>1</sup>

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<sup>1</sup>It is understood that the term "agreements or arrangements negotiated under GATT auspices" refers to instruments resulting from multilateral negotiations convened or sponsored by the CONTRACTING PARTIES 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 agree that safeguard action may only follow a determination by the domestic authorities concerned that imports of a particular product are causing or threatening to cause serious injury to the 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 cause 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: actual and potential decline in output, turnover, market share, profits, exports, utilization of productive capacity, productivity; factors affecting domestic prices; actual and potential negative effects on inventories, domestic employment and wages, and investment. 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 causing serious injury or threat thereof. Injury caused or threatened by other factors must not be attributed to imports. Therefore, the determination of the 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.

(b) Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement 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 PROCEDURES

1. No safeguard action may be implemented by a Party 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 and causality.

If in special circumstances the previously designated governmental authorities of a Party decide to initiate an examination or an investigation without having received such a request, they shall proceed only if they have sufficient evidence on serious injury and causality.

2. In examining the case(s), the authorities shall, subsequent to reasonable public notice, afford interested Parties an opportunity to present their views and relevant evidence by way of public hearings or otherwise, in order to facilitate the development of the fullest possible information upon which the authorities may judge the need for safeguard action.

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 concerned, other interested Parties, where deemed appropriate, and to directly interested 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 and to any interested private party upon request.

4. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause shown, be treated as such by the governmental authorities. Such information shall not be disclosed without specific permission of the Party or private party submitting it.<sup>1</sup> Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event such Parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

5. 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 elapsed since the examination under this Chapter was concluded.

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<sup>1</sup>Parties are aware that in the territory of certain Parties disclosure pursuant to a narrowly-drawn protective order may be required.

CHAPTER 3 - CONDITIONS

Safeguard measures should be proportionate 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 Party shall stipulate the period of validity of such measure which initially shall not exceed eighteen 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. The extension shall be on terms no more restrictive than those obtaining immediately prior to the extension. In no case shall the safeguard measure and its extension(s) total more than five years.
- (c) No safeguard measure shall be implemented with respect to any product which was subject to a safeguard measure within the preceding two years.



- (d) Safeguard measures shall wherever feasible be progressively liberalized during the period of their application and appropriate policy measures shall be taken to encourage the adjustment of domestic producers to import competition.
- (e) Safeguard measures shall not reduce the level of imports below the level in the most recent representative period which would normally be the latest twelve-month period for which export statistics are available.
- (f) The Parties shall ensure that the provisions of this Chapter are not circumvented through over-categorization of products.

CHAPTER 4 - NATURE OF SAFEGUARD ACTION

1. Safeguard measures pursuant to this Agreement shall be applied on a global basis without discrimination as between sources of imports. In the unusual and exceptional unforeseen circumstances described in the following paragraph, safeguard measures may be limited to imports from a particular exporting Party/Parties in accordance with the provisions of this Chapter. In all cases, the obligations, conditions, criteria and procedures established in the other Chapters of this Agreement shall be adhered to unless otherwise provided for in the following paragraphs.

2. Where serious injury or threat thereof, as described in Chapter 1, exists and where unusual and exceptional unforeseen circumstances are clearly established by the importing Party with current data, the importing Party may by agreement with an exporting Party/Parties apply safeguard measures limited to imports from no more than two or three of these Parties, provided such measures are applied equitably as amongst these imports. The following elements, which it is the responsibility of the importing Party to establish, would determine whether unusual and exceptional unforeseen circumstances exist:

- (a) a very sharp and substantial increase of imports over a short period of time is taking place from not more than two or three sources,
- (b) these imports take a significant and rapidly increasing share of the domestic consumption and they significantly displace the domestic production rather than imports from other sources,

(c) these imports individually account for a substantial proportion<sup>1</sup> of total imports, and

(d) imports from other countries cannot be regarded as a significant factor on the unusual and exceptional unforeseen circumstances, provided, however, that no imports shall be discriminated against on the grounds of low costs or low prices. These measures may be applied by either the importing Party or the exporting Party/Parties or both.<sup>2,3</sup>

3. Where action is envisaged against imports from a particular Party/Parties without being extended to a supplier accounting for a larger share of the domestic consumption but whose exports are not a significant factor in the sharp and substantial increase of total imports over a short period of time, justification for this shall be provided by the importing Party. In such cases, the larger supplier should not benefit from the restriction, and the growth based on volume accorded to the exports of the restrained exporting Party/Parties to the importing Party should not be less than that enjoyed by the larger supplier. The importing Party shall during the period of restriction of a non-global nature submit on a quarterly basis to the Committee import statistics for the product under restriction.

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<sup>1</sup>It would be for consideration whether indicative percentages should be mentioned in a record of understanding.

<sup>2</sup>Where the exporting Party/Parties can effectively apply the measure, it should normally do so.

<sup>3</sup>In adhering to the obligations and procedures specified in this Chapter, parties further understand that no such measures may be taken without prior notification and consultation as provided in Chapter 5.

4. When seeking agreement with respect to a proposed measure of the kind described in the preceding paragraph, in consultations<sup>1</sup> to be held pursuant to Chapter 5, both Parties shall endeavour to reach a conclusion within a reasonable period of time. Such consultations shall cover, inter alia, factual evidence to be provided by the importing Party and otherwise available, on injury or threat thereof and sources of imports, the terms of the proposed measure in relation to the requirements of paragraph 2 and of Chapter 3 (including level of restriction, duration, product coverage, progressive liberalization of the restriction), and possible offsetting measures.

5. If in consultations described in paragraph 4, agreement on the proposed measure is not reached between the importing Party and the exporting Party/ Parties within sixty days from the date the request for consultations was received by the exporting Party/Parties or within a shorter period, the importing or exporting Party/Parties may refer the matter to the Committee on Safeguard Measures. The Committee<sup>2</sup> shall promptly examine the matter on the basis of factual evidence to be provided by the importing Party and otherwise available, consult with the Parties concerned and assist them in seeking a mutually satisfactory solution to the problem. If the Committee determines that

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<sup>1</sup>Such consultations shall be considered as the basis for proceeding under the dispute settlement provisions of Chapter 6.

<sup>2</sup>To assist its consideration of the matter, the Committee shall normally establish a panel of experts.

- (a) the proposed measure is consistent with the obligations, conditions, criteria and procedures established under this Agreement,
- (b) unusual and exceptional unforeseen circumstances as provided for in paragraph 2 exist, and
- (c) the proposed measure is to be applied equitably amongst imports from not more than two or three Party/Parties and would be consistent with the provisions of paragraph 3,

it shall so inform the interested Parties whereupon the importing Party may proceed to take a safeguard measure limited to imports from not more than two or three exporting Party/Parties. The Committee shall make the determination within a reasonable period of time, normally within sixty days. It is understood that the importing and exporting Parties mentioned in this Chapter shall not participate in the reaching of the decision. It will also be open to the Committee to make any appropriate recommendations.

Critical circumstances

6. In cases where the importing Party clearly establishes the existence of

- (a) critical circumstances which result from a rapid and massive increase of imports from a particular Party/Parties and where even a short delay would cause damage difficult to repair, and
- (b) unusual and exceptional unforeseen circumstances as provided for in paragraph 2,

the importing Party may seek urgent consultations<sup>1</sup>, to be held pursuant to paragraph 4, with the particular exporting Party/Parties with a view to reaching a mutually acceptable interim arrangement. The importing Party shall provide factual evidence to substantiate its view that the serious injury results from the exports of the Party/Parties concerned and that damage difficult to repair would result in the absence of such an arrangement. With the agreement of the exporting Party/Parties concerned, an interim arrangement may be introduced for a maximum period of sixty days, unless the period is extended by mutual agreement or it is replaced by a definitive arrangement acceptable to the Parties concerned. If agreement is not reached within ten working days, the importing Party may take provisional action, subject to the provisions of paragraphs 2 and 3 and limited to imports from a particular Party/Parties. This provisional action shall lapse after a maximum duration of forty-five days. The importing Party shall at the same time refer the matter to the Committee giving full details of the provisional action and the definitive measure it proposes to take, and shall inform the exporting Party/Parties concerned.

7. The Committee<sup>2</sup> shall promptly examine the matter on the basis of factual evidence to be provided by the importing Party and otherwise available, consult with the Parties concerned and assist them in seeking a

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<sup>1</sup>Such consultations shall be considered as the basis for proceeding under the dispute settlement provisions of Chapter 6.

<sup>2</sup>To assist its consideration of the matter, the Committee shall normally establish a panel of experts.

mutually satisfactory solution to the problem. If the Committee determines that

- (a) critical circumstances as provided for in paragraph 6 exist,
- (b) the proposed definitive measure is consistent with the obligations, conditions, criteria and procedures established under this Agreement,
- (c) unusual and exceptional unforeseen circumstances as provided for in paragraph 2 exist, and
- (d) the proposed definitive measure is to be applied equitably amongst imports from not more than two or three Party/Parties and would be consistent with the provisions of paragraph 3,

it shall so inform the interested Parties whereupon the importing Party may proceed to take the safeguard measure limited to imports from not more than two or three exporting Party/Parties. The Committee shall make the determination within thirty days from the date the matter was referred to it. It is understood that the importing and exporting Parties mentioned in this Chapter shall not participate in the reaching of the decision. It will also be open to the Committee to make any appropriate recommendations. If the Committee determines that critical circumstances do not exist, the importing Party may avail itself of the procedures under paragraphs 4 and 5.

General provisions

8. When seeking agreement with respect to a proposed measure pursuant to paragraph 2, the importing Party should offer to the exporting Party/Parties concerned more liberal terms than those provided for in Chapter 3. Any agreement should provide for the progressive liberalization of the measure over the period of application of the measure which shall not normally exceed three years. The importing Party shall also endeavour to offer adequate compensation to the exporting Party/Parties concerned.
9. Safeguard measures taken in accordance with paragraphs 5 and 7 shall be subject to the requirements of Chapter 3, except that
- (a) in no case shall the measure be maintained for more than eighteen months,
  - (b) the measure shall not reduce the level of exports from the particular Party/Parties below the level obtaining in the most recent representative period which would normally be the latest twelve-month period for which export statistics are available, and
  - (c) the measure shall be progressively liberalized during its period of application and the importing Party shall endeavour to offer adequate compensation to the exporting Party/Parties concerned.
10. If an exporting Party/Parties which has agreed to a safeguard measure pursuant to paragraph 2 considers that it is placed in a disadvantageous position in relation to other exporting countries not subject to the measure, it may request consultation with the importing Party at any time throughout



the period of application. The importing Party shall consult with the requesting exporting Party/Parties without delay. If no satisfactory solution is reached, the exporting Party/Parties may withdraw the agreement to the measure. In such cases paragraph 5 shall apply.

11. If an exporting Party/Parties considers that a determination made by the Committee pursuant to paragraph 5 or 7 is no longer justified due to changes in circumstances or that it is placed in a disadvantageous position in relation to other exporting countries not subject to the measure, it may refer the matter to the Committee at any time throughout the application of the measure. Upon such referral, the Committee shall promptly re-examine its determination and make, where appropriate, any further determination it considers necessary.<sup>1</sup>

12. Exporting Parties who are "affected contracting parties" referred to in Article XIX:3(a) retain the right to suspend substantially equivalent concessions or other obligations under the GATT as provided in that Article and subject to the provisions of Chapter 7. Any "agreement" referred to in this Chapter may include agreement not to exercise those rights. Where a provisional safeguard measure is taken in critical circumstances as described

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<sup>1</sup>It should be recalled that there will also be an annual report to the Committee by Parties on safeguard measures they are maintaining in force and an annual review by the Committee of those measures, pursuant to Chapters 5 and 6.

in paragraph 6 above, an exporting Party/Parties affected by the measure in question may immediately suspend substantially equivalent concessions or other obligations to the importing Party concerned, for the period of duration of the provisional measure, without prior notice in writing on the condition that notification shall be effected immediately after taking such action.

13. The Parties shall ensure that the provisions of this Chapter are not circumvented through over-categorization of products.<sup>1</sup>

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<sup>1</sup>This paragraph might be deleted if Chapter 3(f) is being maintained (same language).

CHAPTER 5 - NOTIFICATION, CONSULTATION

1. A Party shall, in accordance with paragraph 2 of Article XIX, notify the CONTRACTING PARTIES<sup>1</sup> 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. 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 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 in accordance with the provisions of Chapter 6 paragraph 4 below.

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

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.

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<sup>1</sup> Among Parties notifications to "the CONTRACTING PARTIES" would be referred to the Committee; consultations with "the CONTRACTING PARTIES" would be conducted in the Committee.

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 PARTIES if the measure is modified or discontinued.
5. A Party considering the extension of a safeguard measure shall notify the CONTRACTING PARTIES<sup>1</sup> forty-five 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 3 above.
6. Parties 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. In conducting consultations provided for in the preceding paragraphs, a Party considering the implementation or extension of 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 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;

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<sup>1</sup> Among Parties, notifications to "the CONTRACTING PARTIES" would be referred to the Committee; consultations with "the CONTRACTING PARTIES" would be conducted in the Committee.

- (b) demonstration of compliance with the conditions provided for in Chapter 3 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 SETTLEMENT

### Committee on Safeguard Measures

1. There shall be established under this Agreement a Committee on Safeguard Measures (referred to herein as "the Committee") composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall meet as provided for in this Agreement. The Committee shall carry out the responsibilities as assigned to it under this Agreement or by the Parties.
2. The Committee may set up subsidiary bodies as appropriate.
3. In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Party, it shall inform the Party involved.
4. Any Party may request the Committee, by written communication to the Chairman, to examine a safeguard measure, which has been proposed or which is in force, if the measure is affecting, or is likely to affect, its trade interests. The Committee shall, on receipt of such a request by the Chairman, meet promptly<sup>1</sup> to conduct the examination requested.
5. 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.

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

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

Conciliation

8. 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, including whether or not such safeguard measure is in conformity with the requirements of this Agreement; 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, with a view to resolving the dispute, shall make appropriate recommendations to the Parties which it considers to be concerned.

9. Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

10. Should the matter remain unresolved, notwithstanding efforts at conciliation made under paragraph 9 above, any Party involved may, thirty days after the request for conciliation, request that a panel be established by the Committee in accordance with the provisions of paragraph 11.

Dispute settlement

11. The Committee shall establish a panel upon request pursuant to paragraph 10.<sup>1/</sup> A panel so established shall review the facts of the matter and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the parties to the dispute under the relevant provisions of the General Agreement as interpreted and applied by this Agreement. In this connexion, panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

12. A panel should be established within thirty days of a request therefor<sup>2/</sup> and a panel so established should deliver its findings to the Committee within sixty days after its establishment.

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<sup>1/</sup> This does not preclude, however, the more rapid establishment of a panel when the Committee so decides, taking into account the urgency of the situation.

<sup>2/</sup> The parties to the dispute would respond within a short period of time, i.e. seven working days, to nominations of panel members by the Chairman of the Committee and would not oppose nominations except for compelling reasons.



13. When a panel is to be established, the Chairman of the Committee, after securing the agreement of the parties concerned, should propose the composition of the panel. Panels shall be composed of three or five members, preferably governmental, and the composition of panels should not give rise to delays in their establishment. It is understood that citizens of countries whose governments<sup>1</sup> are parties to the dispute would not be members of the panel concerned with that dispute.

14. In order to facilitate the constitution of panels, the Chairman of the Committee should maintain an informal indicative list of governmental and non-governmental persons qualified in the fields of trade relations, economic development, and other matters covered by the General Agreement and this Agreement, who could be available for serving on panels. For this purpose, each Party would be invited to indicate at the beginning of every year to the Chairman of the Committee the name of one or two persons who would be available for such work.

15. Panel members would serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments would therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

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<sup>1</sup>The term "governments" is understood to mean governments of all member countries in cases of customs unions.

16. Any Party having a substantial interest in the matter before a panel, and having notified this to the Committee, should have an opportunity to be heard by the panel. Each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a State it shall inform the government of that State. Any Party should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided should not be revealed without formal authorization from the Party providing the information.
17. To encourage development of mutually satisfactory solutions between the parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee.
18. If a mutually satisfactory solution is developed by the parties to a dispute before a panel, any Party with an interest in the matter has a right to enquire about and be given appropriate information about that solution.
19. In cases where the parties to a dispute have failed to come to a satisfactory solution, the panel shall submit a written report to the Committee which should set forth the findings of the panel as to the questions

of fact and the application of the relevant provisions of the General Agreement as interpreted and applied by this Agreement and the reasons and bases therefor. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

20. The Committee shall consider the panel report as soon as possible and, taking into account the findings contained therein, may make recommendations to the parties with a view to resolving the dispute. Committee recommendations should be presented to the parties within thirty days of the receipt of the panel report.

21. In cases where the Committee's recommendations are not followed within a reasonable period or where the Committee considers that the circumstances are serious enough to justify such action, the Committee may authorize the suspension of rights or obligations under this Agreement and recommend to the CONTRACTING PARTIES that they authorize, pursuant to Article XXIII:2 of the General Agreement, a contracting party or parties to suspend the application to any other contracting party of such concessions or other obligations under the General Agreement as they determine to be appropriate in the circumstances. Pending such authorization by the Committee, an exporting Party/Parties affected by a measure which it considers to have been taken inconsistently with Chapter 4 may immediately suspend substantially equivalent concessions or other obligations to the importing

Party concerned without prior notice in writing on the condition that notification shall be effected immediately after taking such action.

22. The Committee may disapprove of any suspension of concessions or other obligations, referred to in Chapter 4, paragraph 12 and Chapter 7. Any Party with respect to which another Party proposes to suspend concessions or other obligations pursuant to Chapter 7 may, by written communication to the Chairman, request the Committee to disapprove of such suspension. The Committee shall promptly investigate the matter and decide whether so to disapprove of the suspension.

23. Nothing in this Agreement shall impair the right of a Party to avail itself of the procedures of Articles XXII and XXIII of GATT.

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 should normally 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. If the affected Party does not so agree, it shall in the first instance and with a view to maintaining the overall level of liberalization request compensation from the Party taking safeguard action from the damage suffered. If the request is not fully met, the affected Party may during the period the safeguard measure is in force exercise its rights under Article XIX:3(a).
3. 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 exercise its rights under Article XIX:3(a) with respect to the suspension of substantially equivalent concessions or other obligations.

4. If the affected Party exercises its rights under Article XIX:3(a), the Party taking safeguard action may request review of the matter under Chapter 6.

CHAPTER 8 - DEVELOPING COUNTRIES

It is for consideration how rules on special and differential treatment for developing countries should be formulated.

CHAPTER 9 - USE OF EXPORT RESTRAINT MEASURES

It is for consideration how any rules on the use of export restraint measures should be formulated.



## CHAPTER 10 - FINAL PROVISIONS

### Acceptance and accession

1. (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community.  
  
(b) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.  
  
(c) Contracting parties may accept this Agreement in respect of those territories for which they have international responsibility, provided that the GATT is being applied in respect of such territories in accordance with the provisions of Article XXVI:5(a) or (b) of the GATT; and in terms of such acceptance, each such territory shall be treated as though it were a Party.

### Reservations

2. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

### Entry into force

3. This Agreement shall enter into force on 1 January 1980 for the governments<sup>1</sup> which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

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<sup>1</sup>The term "governments" is deemed to include the competent authorities of the European Economic Community.

Pre-existing measures

4. 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 later than eighteen months from that date unless extended in accordance with the provisions of this Agreement.
5. All other pre-existing restrictive measures subject to 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 eighteen months following the date indicated above unless extended in accordance with the provisions of this Agreement.
6. The Committee shall examine measures which were maintained before entry into force of this Agreement and which a Party proposes to extend under paragraphs 4 or 5 above, in order to determine whether the measures are in conformity with the provisions of this Agreement.

National legislation

7. (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.  
(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

(c) The laws, regulations and administrative procedures of each Party shall be open to examination by the Committee pursuant to Chapter 6.

Review

8. (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.
- (b) After the end of the third year from the entry into force of this Agreement and after the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, with a view to making any adjustments that may be necessary.

Amendments

9. The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

10. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may, upon the receipt of such notice, request an immediate meeting of the Committee.

Non-application of this Agreement between particular Parties

11. This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Secretariat

12. This Agreement shall be serviced by the GATT secretariat.

Deposit

13. This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1, or each withdrawal therefrom pursuant to paragraph 10.

Registration

14. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ..... day of .....  
nineteen hundred and seventy-nine in a single copy, in the English, French  
and Spanish languages, each text being authentic.