

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/1
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Group of Negotiations on Goods (GATT)
Negotiating Group on Safeguards

NEGOTIATING GROUP ON SAFEGUARDS

Meeting of 10 March 1987

Note by the Secretariat

Appointment of Chairman

1. Ambassador G. Maciel (Brazil) was appointed Chairman of the Negotiating Group.

Examination of the issues in the area of safeguards

2. The Chairman referred to the negotiating plan of the Group and suggested that papers by participants setting out their specific suggestions for achieving the Negotiating Objective in this area, if not forthcoming during this meeting, should be presented before the next meeting.

3. During the discussions, many delegations stressed the urgency and the importance of concluding a comprehensive agreement on safeguards which would strengthen the GATT system and facilitate the observance of the standstill and rollback commitments leading to trade liberalization. Some of them stated that such an agreement would help the progress of the entire Multilateral Trade Negotiations, and that achievements in other areas of the MTN would mean very little to them if negotiations on safeguards did not lead to satisfactory results. Some delegations said that it was of critical importance that negotiations on safeguards be conducted on a priority basis and should not be conditioned on the progress made in other areas. Many referred to the basic principles of the General Agreement as the basis for the agreement on safeguards, as stipulated by the Ministerial Declaration. To them, these included the basic principles of most-favoured-nation treatment and non-discrimination which were non-negotiable. Some delegations said that selectivity in any form would be a step backward. An agreement permitting selectivity would legitimize "grey-area" measures, lead to more market-sharing arrangements with wider coverage of products and would stifle the economic development of developing countries. One delegation used the example of the MFA to illustrate the gradual deterioration of discipline and the increasing restrictiveness of a selective safeguards arrangement.

4. Some delegations referred to the lack of tangible results in past negotiations on safeguards and suggested that fresh ideas and new premises were needed for the current negotiations. Several delegations remarked that endeavours should be directed to tackle real trade problems with a view to finding a negotiated solution to such problems. One delegation suggested that the discussions had to go beyond the question of whether safeguard measures were implemented on a selective or global basis and that the Group should try to analyse the circumstances which had led to the invocation of Article XIX actions or the use of "grey-area" measures. Another delegation suggested that such an analysis should address the question of why countries preferred the use of "grey-area" measures to Article XIX actions. One delegation remarked that various types of safeguard measures were being applied by contracting parties without the invocation of any GATT article and that had jeopardized the integrity of the multilateral trading system; the main task of the Group should therefore be to work out methods to bring discipline to the full range of safeguard measures. While some delegations maintained that the discipline for the invocation of Article XIX should be clarified and reinforced, some other delegations believed that ensuring stricter application of that Article would not in itself be enough to remedy the situation because the inherent difficulties in that Article were the very reasons which had led to the avoidance of the application of the Article by many countries in taking safeguard actions. The representative of a group of delegations maintained that the Group's deliberation had to work towards a credible and enforceable solution and that a comprehensive agreement on safeguards had to come to grips with "grey-area" measures. Some incentive had to be created in order to encourage countries to work under a multilateral framework by subjecting all "grey-area" measures to multilateral discipline. The representative of another group of delegations mentioned Article VI as one of the GATT provisions which permitted selectivity, and that many "grey-area" measures originated from discussions related to this Article. A number of delegations said that Article VI did not permit selectivity but was designed to re-establish conditions for fair competition.

5. One delegation said that "grey-area" measures were inconsistent with the basic GATT principles and thus could not be the subject for negotiations. Existing measures should be phased-out in accordance with the rollback commitment and new measures should be prohibited as they would run counter to the standstill commitment. Another delegation believed that it was not profitable to argue about whether or not measures inconsistent with GATT embraced the "grey-area" measures. Nevertheless, now that there was a mechanism for the implementation of the standstill and rollback commitments, it was essential to see the beginning of the elimination of existing "grey-area" measures and the non-introduction of new measures because the participants had undertaken not to take any trade measures in such a manner as to improve their negotiating position and requests for restraints in the form of "grey-area" measures would violate such a commitment. One delegation pointed out that, according to a GATT document, "grey-area" measures covered only an extremely small percentage of world trade, and that these measures therefore constituted only a small problem and there would be no justification for these measures to depart from GATT principles.

6. The representative of a group of delegations suggested that the Group should start the negotiations, as a reference point, on the concepts of temporary nature and degressivity of Article XIX actions. Several delegations agreed that negotiations could proceed on this basis, bearing in mind that the mere examination of elements would not give sufficient attention to the overall objective of a comprehensive agreement. Some delegations disagreed. They pointed out that a comprehensive agreement should incorporate all the elements enumerated in the Ministerial Declaration. By addressing only two of the many elements, there was the danger that the other elements might be forgotten or prejudiced by this approach. Several delegations referred to these elements and stated their positions on some of them. They said that all safeguard actions should be non-discriminatory, temporary in nature, with degressivity linked to structural adjustment, that the concept of injury and threat thereof should be clearly defined, and that there should be full transparency and effective surveillance. The representative of a group of delegations expressed disappointment at the responses to his suggestion. He said that in order to make real progress in the negotiations, the Group would need to tackle the elements one by one, and should begin with the easier ones in order to avoid a complete deadlock right at the start.

7. Several delegations suggested that the principle of special and differential treatment to developing countries, as mentioned in Section B of the Ministerial Declaration, should be applied to the area of safeguards. This could be achieved by exempting the application of safeguard actions on the exports of developing countries and by strengthening the element of compensation as there was a lack of retaliatory power by developing countries. The representative of a group of delegations remarked that special and differential treatment in this regard would amount to selectivity the other way round and would lead to an imbalance of rights and obligations. He said that Article XIX did not talk of retaliation but of suspension of concessions. If concessions were not made, naturally they could not be suspended. One delegation said that developing countries needed special and differential treatment because there was a serious imbalance in international trade and because developing countries still intended to participate actively in international trade despite those imbalances.

8. Many delegations referred to the negotiating plan of the Group and said that it was unique in that no initial phase of negotiations was envisaged. The Group should therefore engage in serious negotiations immediately. One delegation expressed its wish to see that negotiations would bring early results, hopefully by 1988. Another delegation said that an early agreement on safeguards should be implemented, on a provisional or definitive basis, prior to the end of the Uruguay Round. One other delegation said that the initial phase of the negotiations could be completed by the end of 1987 at the latest; after that, a review should be conducted in order to consider the best way to deal with outstanding problems and to see whether an interim agreement might possibly be contemplated.

9. On the legal framework of an agreement on safeguards, one delegation suggested that the most appropriate way would be in the form of a protocol modifying or complementing the provisions of Article XIX. Many delegations mentioned that the agreement should be applied to all contracting parties, and that a MTN-type code would therefore not be sufficient for this purpose. One delegation suggested that the terms of an agreement on safeguards should be incorporated into national legislation.

10. One delegation announced its intention to submit, in consultation with other delegations, a structured proposal by the next meeting. Several others said that suggestions from their governments were forthcoming.

Documents by the secretariat

11. A paper by the secretariat on work already undertaken in the GATT on safeguards, later issued as MTN/NG9/W/1, was distributed informally during the meeting.

12. The suggestion to update the inventory of Article XIX actions and other measures which appear to serve the same purpose (Spec(82)18/Rev.3 and L/6087) and arrange it by categories of actions was supported by many delegations. There were also other requests for papers of a more analytical nature. The representative of a group of delegations, while not objecting to the preparation of papers by the secretariat, pointed out that there already existed enough papers and studies and that further papers were not necessary. The Chairman concluded that the secretariat would update and reorganize the inventory mentioned above after consulting with delegations, and that the secretariat would look into the possibility of producing other papers of a more analytical nature and would consult with delegations to see what was involved. He added that the fact that the secretariat had been asked for more papers should not slow down the negotiating process.

Other Business

(a) Records of meetings

13. The Group agreed to the Chairman's suggestion that the secretariat issue records setting out all the main points and specific suggestions put forward during the discussions.

(b) Date of next meeting

14. After a short discussion, the Chairman concluded that the next meeting of the Group should be held not later than 25 May 1987 but that, if specific suggestions by delegations were made well ahead of that date and consultations showed that an earlier meeting was justified, such a meeting would be arranged, the date of 30 April 1987 having been mentioned as a possibility in this regard.