

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)  
Negotiating Group on Safeguards

COMMUNICATION FROM SWITZERLAND

Safeguards

The following communication, dated 2 October 1987, has been received from the delegation of Switzerland.

1. In accordance with the Negotiating Plan, the Swiss delegation submits this communication to the Negotiating Group on Safeguards as a contribution to the consideration of the issues to be dealt with in this area. It may have occasion to submit further communications in order to develop the ideas set out below.

2. The General Agreement distinguishes between several categories of safeguards, according to the type of interest at stake and/or the scope of the measures provided for:

- The provisions relating to health, security etc. in Articles XX and XXI protect interests situated at other levels than purely economic and trade interests. The specific reasons for their existence do not directly concern the object of our work in the present context.
- Articles XII and XVIII:B, applicable in cases of balance-of-payments difficulties, are motivated by grounds that have nothing to do with the subject of concern to us here. These provisions do not seek directly to protect an industry but rather a country's monetary reserves (cf. Article XII:2(a) and XVIII:8 and 9).
- Article XVIII:A concerns protection of industries that do not yet exist or infant industries. This is a special case which does not need to be dealt with here, at this stage.
- The last of these provisions, and the one of concern to us here, is Article XIX, "Emergency action on imports of particular products".

Article XXVIII is sometimes considered a kind of safeguard clause. However, the measures for which it provides (raising of bound tariffs against corresponding compensation) are not limited in time nor linked to any other particular condition. They may therefore be taken without an industry being in difficulty (for example, to equalize a tariff structure or to replace a non-tariff measure by a customs duty) and thus do not strictly have a safeguard function.

Articles VI and XVI do not constitute safeguard measures but means of defence against specific behaviour on the part of exporters or exporting countries.

3. With regard to the distinctions established by the General Agreement, the question may nevertheless be asked as to whether all situations in which a safeguard measure might appear desirable and justified are taken into account by the General Agreement, and whether they are taken into account in an adequate manner. The experience of recent years has shown that some measures that may be likened to safeguard action in terms of their grounds and effects have been taken outside the machinery provided for by the multilateral system (grey-area measures). One may therefore also ask whether such measures reflect a reprehensible contempt for the multilateral provisions, or were necessary because the General Agreement does not cover the situations that prompted them.

4. Grey-area measures are directed above all at difficulties of a sectoral nature. It may therefore be thought - and it has been claimed - that they are in principle covered by Article XIX. However, Article XIX concerns a type of sectoral difficulty that is quite different from that which has given rise to grey-area measures.

The conditions and modalities of application of Article XIX refer explicitly to "unforeseen effects of obligations incurred". In other words, this Article is part of the liberalization machinery, of which it is in a sense the "safety valve". As for the first generation grey-area measures<sup>1</sup>, they virtually all concern difficulties of a "structural" nature resulting from the fact that products and production and/or marketing methods are not adapted to market situations.

5. The General Agreement does not deal with cases of structural difficulties of an industrial sector. In addition, it draws clear distinctions between various cases of safeguard action, and does not contain any general provision designed to cover all possible grounds and types of measures. In order to cover structural difficulties, it is therefore necessary to fill a gap with an adequate and explicit provision. An existing provision cannot be applied by analogy, for there is nothing to warrant the view that the authors of the General Agreement wished to include a general safeguard clause in the Agreement.

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<sup>1</sup>The second generation grey-area measures are agreements like the United States-Japan agreement on semi-conductors.

6. The following considerations refer to measures to be taken in cases of structural difficulties. The Swiss delegation reserves the possibility of also submitting further suggestions concerning action to be taken to deal with other types of situation (regional policy, for example, etc.).

When seeking to draw up suitable rules relating to action recognized de lege ferenda by GATT in case of structural difficulty, it is first of all necessary to ask whether trade measures (restrictions at the frontier, whether on imports by the importing country or on exports by the exporting country) are economically justified. For it is more and more widely recognized today that such action is not really to the advantage of the "protected" industry and delays adjustment at the expense of the competitive sectors of the economy concerned. From this standpoint, it would be best to discourage action at the frontier taken for structural reasons, while on the other hand accepting that governments should take certain domestic measures as part of a structural adjustment programme, initially by the private sector and secondarily by the government, in situations where the normal process of structural adjustment cannot take place through the sole efforts of the sector concerned.

In other words, it would be a question of defining what domestic measures would be acceptable and what action would be prohibited.

On the other hand, the conditions and modalities of application of the measures thus defined would be subject to certain rules in the same way as traditional safeguards.

7. In the event that it proved that safeguards at the border should nevertheless and in addition still be authorized, it would be desirable, so as to discourage them as effectively as possible, to subject them to the most rigorous and strict discipline. This discipline should include certain elements which have already been raised (for example, in the document of the Pacific countries, MTN.GNG/NG9/W/4), namely:

- the requirement that measures at the frontier should necessarily be accompanied by a structural adjustment programme, initially by the sector in difficulty and secondarily by the government. This programme should be notified to the CONTRACTING PARTIES. When doing so, it should in particular be shown that the programme meets the conditions and modalities provided for and that any government benefits do not unnecessarily replace the efforts of the industry concerned itself. In taking note of the existence of such a programme and the conditions in which it is implemented, however, the CONTRACTING PARTIES cannot vouch for its outcome;
- application erga omnes without exception, which rules out the conclusion of VER-type agreements;

- a maximum length of application with, perhaps, the possibility of a single extension under certain conditions specified in advance;
- automatic degressivity according to a programme established in advance;
- appropriate notification and surveillance modalities.

8. Given their objective, safeguard measures aimed at overcoming structural difficulties should not necessarily be subject to any counterpart (compensation, retaliation), at least as long as the "internal" measures as well as any action that may be taken at the frontier follow the rules laid down for the purpose.

With regard to compensation to be given by the importing country, it does indeed have the merit of preserving the overall level of liberalization, as well as of exercising an appreciable deterrent effect. However, in practice, it often amounts to an accounting exercise rather than genuine relief for the injured countries. Furthermore, since it is limited in time like the safeguard measures, it has the effect, above all, of destabilizing the trade régime of the country in question rather than offering real advantages.

With regard to retaliation - in cases other than those under Article XIX - it is often not within the power of the injured countries, for which it may furthermore represent an additional sacrifice inasmuch as it affects their conditions of access to the imported products. It would nevertheless be most desirable that sanctions may be taken, in certain well-defined conditions and in particular in the event of non-compliance with the agreed safeguard régime. To be effective, such sanctions should, however, consist of collective action whose automatic conditions and modalities would be part of the régime to be established.

9. Needless to say, one of the main objectives of a safeguard régime established according to the above principles would be to eliminate all existing grey-area measures. To that end, a specific rollback timetable and modalities should be established and placed under special surveillance.