

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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

NEGOTIATING GROUP ON SAFEGUARDS

Meeting of 5 and 6 October 1987

Note by the Secretariat

1. MTN.GNG/NG9/3, dated 12 October 1987, is a note by the Chairman setting out some of the main points raised at the meeting of the Negotiating Group on 5 and 6 October 1987. This note gives a more detailed summary of the discussion at that meeting, without reproducing points already contained in notes on previous meetings of the Negotiating Group (see MTN.GNG/NG9/1 and 2).

I. Examination of the issues in the area of safeguards

2. The Negotiating Group had an initial exchange of views on new proposals by Egypt, Switzerland and Japan (contained in MTN.GNG/NG9/W/9, 10 and 11). The Group also had some further discussions on the two proposals made earlier, one by Brazil in MTN.GNG/NG9/W/3 and the other jointly by Australia, Hong Kong, Republic of Korea, New Zealand and Singapore, distributed as MTN.GNG/NG9/W/4 and further explained in MTN.GNG/NG9/W/8.

Notification and transparency

3. Several delegations said that they envisaged notification requirements to cover all safeguard measures including those taken outside Article XIX. One delegation suggested that notification of safeguard measures should include relevant national legislation and procedures.

Injury or threat thereof

4. One delegation said that the principal cause of serious injury or threat thereof must be increase in imports, while other economic factors relating to the sectors concerned should be taken into account in a comprehensive manner. Another delegation asked whether a direct causal link between increased imports and decline in the conditions of domestic producers could always be established and whether increase in imports should be absolute or relative. The same delegation said that factors such as market share, diversion of trade, technological changes and changes in consumer preferences, overall competitiveness of industry and its ability

to generate capital, could also be included in determining injury on a case-by-case basis.

5. Several delegations did not support the suggestion that appropriate negotiations under Article XXVIII could be used to deal with a situation of threat of injury because such negotiations were usually lengthy while a situation of threat of injury represented some sort of emergency where quick remedies were required. The response to this argument was that a situation of threat of injury meant that injury was foreseen, and therefore could be sufficiently dealt with by Article XXVIII negotiations which, depending on the will of the parties concerned, could be completed expeditiously. This method to deal with threat of injury could prevent the abusive use of safeguard actions. One delegation commented that if a threat of injury could no longer be a justification for action under Article XIX, the result would probably be an expansion of the scope and trade effect of safeguard actions. Another delegation cautioned that protection under Article XXVIII would be permanent whereas those under Article XIX actions were, by definition, temporary in nature.

Coverage

6. On country coverage of safeguard actions, one participant said that the bedrock foundation of the GATT was the most-favoured-nation principle and that his government remained committed to maintaining this principle. However, ways and means would have to be found to ensure that safeguard actions, regardless of their form, were taken only as exceptions and in conformity with meaningful and enforceable GATT discipline. A spokesman for a number of delegations said that Article XIX envisaged actions against products and not against source. It was non-discriminatory in its operation and was a logical counterpart to the provisions of Articles I and XIII. One delegation said that the question of selectivity could be automatically resolved if border measures were disallowed, and only domestic measures were possible as safeguard actions.

7. On product coverage, one delegation asked how a product should be defined, broadly or narrowly? One representative said that over-definition of the characterization of a product such as price, quality or other physical attributes should be avoided, in order to prevent circumvention of the principle of non-discrimination by singling out supplies from certain sources. One delegation suggested that the question of whether or not the negotiations should cover agricultural products required further examination, either in this Group or in another appropriate Group. Several delegations said that an agreement on safeguards should, in principle, apply to all products including textiles.

"Grey-area" measures

8. A spokesman for a number of delegations referred to the concluding paragraph of MTN.GNG/NG9/W/8 and said that the intention of Ministers to preserve and strengthen the basic principles of GATT and the procedures of

Article XIX was very clear. There was no room for compromise with those who would urge that the GATT be realigned to conform with the reality and practices of the "grey-area". One delegation stated that virtually all "grey-area" measures stemmed from difficulties of a structural nature in certain sectors resulting in a failure to adapt to market situations. Hence, one had to adequately address the question of structural difficulties in order to eliminate all existing "grey-area" measures. A spokesman for a group of delegations said that a simple condemnation of "grey-area" measures would not be conducive to a successful negotiation on safeguards because there would be no solution on safeguards unless the question of the "grey area" was resolved. There was a variety of reasons for the growing number of such measures, which would not disappear overnight. There was an inherent element of compensation in all these measures, like stability and security of market access. All these elements relating to real economic life had to be discussed. Sovereign governments had to be convinced that a solution acceptable to all was possible. For them, an acceptable solution on safeguards would have adequately to address the existing imbalance of rights and obligations and would have to contain effective mechanisms to prevent the circumvention of the final results, so that they would feel that there was no need for "grey-area" measures any more. If "grey-area" measures remained outside the GATT, then they would continue to be untransparent, not subject to any form of control or discipline. One participant said that various countries had different ways and means of providing temporary relief to their domestic industries. "Grey-area" measures were politically rather attractive because they were easy to arrange and they sometimes provided certain benefits to exporting countries as well. While he was not a proponent of such measures, he nevertheless believed that trying to get rid of "grey-area" measures without considering the broader problem of structural adjustment and the political readiness of governments for economic change was too simplistic an approach. The most important objective of the negotiation on safeguards was to preserve and further trade liberalization. It was therefore important to find ways and means to minimize the adverse effects of safeguard actions on contracting parties. One might have to go beyond the Negotiating Group on Safeguards to find a solution for the "grey area". The Groups dealing with market-access questions would have particular relevance to the negotiations on safeguards. One delegation pointed out that even if "grey-area" measures were economically beneficial to exporters, these benefits were only short-term. There was no dispute that such measures were contrary to the objective of trade liberalization because they were an obstacle to structural change and adversely affected third countries. Another delegation said that the Group should further consider how best to extend GATT discipline on "grey-area" measures, including a timeframe and specified conditions. A representative speaking for several delegations said that "grey-area" measures were symptoms of a disease threatening the multilateral trading system: it was therefore essential that a comprehensive agreement on safeguards would deal effectively with such measures and ensure that all safeguard actions were taken on the basis of multilaterally developed rules and disciplines. One delegation said that if some participants could not eliminate "grey-area"

measures, then they could be regulated in accordance with certain guidelines already laid down by Ministers, such as further trade liberalization, improvement of the multilateral trading system and improved access for the exports of developing countries.

Nature of the measure

9. One delegation proposed that suitable rules relating to actions recognized by GATT in cases of structural difficulties should be drawn up. Since it was generally agreed that trade measures taken at the border did not work to the advantage of domestic industries concerned, it would be best to discourage such actions, while allowing governments to take certain domestic measures as part of a structural adjustment programme, initially by the private sector and secondarily by the government. The central issue for the Negotiating Group was what domestic measures would be acceptable and what would be prohibited. In the event that safeguard measures at the border proved to be necessary, in addition to domestic measures, then they should be subject to the most rigorous and strict discipline and surveillance. A spokesman for several delegations said that safeguard measures should be limited to the withdrawal of GATT concessions, thus providing for temporary relief. He doubted the usefulness of establishing too rigid provisions as to whether tariffs or quantitative restrictions should be applied because the special situation of each individual case would have to be taken into account. Another spokesman for a group of delegations said that it was important to prevent the circumvention of any agreed rules by the manipulation of definitions of product coverage, the choice of reference period, the allocation of quotas and distribution of growth rates.

Temporary nature of safeguard actions

10. Several delegations were in favour of fixing a maximum period for safeguard actions. One delegation asked if it would be more appropriate to have a "target date" rather than a fixed period. One delegation proposed that the duration for import relief measures should not be longer than two years, but that this period might be extended by another year upon authorization by a special body, and in special circumstances, by a fourth and final year. All safeguard actions whether taken under, or outside, Article XIX should be phased out within four years.

Degressivity and structural adjustment

11. One delegation said that his proposal on safeguards concentrated on structural problems. As the General Agreement did not deal with cases of structural difficulties, it was necessary to fill the gap with adequate and explicit provisions to handle such problems. A representative said that the implementation of structural adjustment should not be a prerequisite for the application of safeguard measures as structural adjustment should basically be accomplished through the market mechanism. One delegation asked how the market mechanism could operate in an unrestricted manner when

measures were taken at the border to protect industries. The response given to this question was that market mechanism would work if there were degressivity of the measures in the form of obligatory progressive liberalization. Another delegation said that if measures at the border were taken, then they should be automatically and progressively reduced according to a programme established in advance. One delegation pointed out that there was a lot of disenchantment with giving out a great amount of domestic assistance to firms without real structural adjustment taking place. Another delegation stated that pressure for basic structural change in certain industries in a number of countries was unprecedented since the founding of the GATT, but structural adjustment was not a matter to be addressed in the context of the safeguards negotiations alone. This delegation said that how governments respond to pressure for structural adjustment was a matter for consideration in capitals. One representative explained that his proposal of incorporating the idea of adjustment to the notion of safeguards was in pursuance of the objective of preventing the possibility of shifting the burden from importing to exporting countries. His proposal was not to legitimize export subsidies. Domestic assistance measures were not intended to make exports more competitive, but to help ailing industries suffering from structural difficulties.

Compensation and retaliation

12. One delegation suggested that safeguard actions taken internally, or those taken at the border following the strict procedures multilaterally agreed, should not necessarily be subject to any compensation or retaliation. Compensation in practice often amounted to an accounting exercise rather than genuine relief for the injured party. Retaliation was often not within the power of weaker trading partners, but sanctions might be desirable in certain well-defined conditions, especially in the event of non-compliance with the agreed rules. To be effective, such sanctions should consist of collective action and should be taken in accordance with agreed automatic conditions and modalities. Several delegations said that the right to take retaliatory action as well as to request compensation should be maintained with a view to preventing the abuse of, and to ensuring deterrence against, safeguard measures. One delegation said that small trading nations found retaliation difficult because of their lack of economic power. Another representative commented however, that retaliation under Article XIX was a powerful tool with a dissuasive effect and that he was not convinced that small trading nations could not make use of it.

Multilateral surveillance

13. Several delegations alluded to the importance of suitable multilateral surveillance to ensure the proper implementation of all the elements in a comprehensive solution on safeguards. One representative said that he could not subscribe to a proposal which provided that import relief measures could be resorted to only after collective determination by a surveillance body because such measures were to be taken to react to emergency situations, and deliberations of a surveillance body would

inevitably take some time. One delegation suggested that a sub-committee in charge of dispute settlement should be established.

II. Future work and date of next meeting

14. The Group took up the question of the next steps in its work. The Chairman noted that the Negotiating Plan did not contain any initial phase to be completed by the end of the year but suggested that the Group should aim to put itself in a position to begin work in the second indent of the Plan by that time. After a short discussion, the Chairman concluded: (i) that the next meeting should be held during the week of 23 November 1987; (ii) that delegations which had not yet tabled papers should make an effort to do so and that the date of the next meeting should be taken as a target for the circulation of such papers; and (iii) that, while general statements could still be made, discussions at the next meeting should address points raised in the papers tabled and the Group's discussions on each of the specific elements enumerated in the Ministerial Declaration and additional elements identified in the Group. The secretariat's note on the May 1987 meeting of the Group (MTN.GNG/NG9/2) sets out these elements.