

**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 24 and 25 November 1987

Note by the Secretariat

I. Examination of the issues in the area of safeguards

1. The representative of the United States introduced a working paper (MTN.GNG/NG9/W/12) on which several delegations made preliminary comments. Some delegations made other points relating to this agenda item. These are summarized in the following paragraphs. Efforts have been made to avoid reproducing points already contained in notes on previous meetings of the Negotiating Group.

Coverage

2. The representative of the United States said that the paper tabled by his delegation listed for the Group's consideration a set of approaches, ranging from strict m.f.n. application of safeguard measures to unilateral selectivity. These approaches did not prejudice the position of the United States and the list was not exhaustive. Option 1 stipulated that all safeguard measures should be taken on an m.f.n. basis. An agreement with a strict requirement on non-discriminatory application of safeguard actions could be developed which also set out improved, explicit disciplines such as those on injury determination, transparency, temporary nature, degressivity, etc. This option would prohibit the use of selective measures, require the immediate phase-out of such measures and subject those who continued to use them to counter measures. This option was based on the notion that the m.f.n. principle was a cornerstone of the GATT and the elimination of discriminatory trade practices was a prerequisite for economic growth. Option 2 prohibited the use of selective measures. It recognized, however, that countries might nevertheless take "grey-area" measures. It therefore established procedures for addressing them. Such procedures would include a mechanism for notifying selective measures to a safeguards committee and for phasing them out over an accelerated period according to an agreed timetable. Failure to do so would lead to counter measures. This option would help users to bring their actions into conformity with an m.f.n.-based safeguards agreement in an orderly manner, while recognizing domestic adjustment needs and problems confronting them. Furthermore, subjecting such measures to counter

measures would deter their use. Under Option 3, the m.f.n. principle would be retained as a norm, but countries would be permitted to take consensual selective actions under a set of strict disciplines. The rules would be designed in such a way as to provide countries with an incentive to act on the basis of the m.f.n. principle. Consensual selective safeguard actions would be subjected to additional disciplines than those taken on an m.f.n. basis. There could be a limit on the number of countries with whom selective actions could be taken, and a more rapid phase-out period. Affected third countries would have the right to review such measures with respect to the possible diversion of trade. All safeguard actions, both m.f.n. and selective, might be reviewed by the Safeguards Committee for their consistency with the rules and their impact on other countries. There would be a possibility for the Committee to relieve a country taking a measure on an m.f.n. basis of compensation or retaliation. This option would provide importing countries with flexibility to craft an effective safeguard process for an affected industry, while establishing more discipline for selective measures. Option 4 legitimized consensual selective measures which would be treated equally with m.f.n. safeguard measures. An agreement based on this option would bring under the Safeguards Committee's review a broad range of measures and provide transparency and discipline over their use. Countries would no longer feel as compelled to take safeguard actions under other GATT articles or to go outside the GATT altogether. On the other hand, this option would signal a shift away from the m.f.n. principle as the cornerstone of Article XIX. Under Option 5, a country would be permitted, subject to the overall disciplines of the agreement, to impose selective measures without the consent of the affected exporting country or countries. As the most permissive option, such an approach would maximize the flexibility of countries to take selective actions under an agreement, albeit with strengthened disciplines. Even this least ambitious option might, if incorporated into a safeguards agreement, bring greater discipline over the present situation. However, this would have severe negative implications for the m.f.n. principle. Allowing unilateral selectivity would increase protectionism and encourage a myriad of separate trade agreements among countries.

3. Many delegations welcomed the US paper and said that it contained useful contributions to the discussions on the core issue. One representative commented that Option 1 was a description of the present situation and discussions should therefore start from this Option and not from the middle of the spectrum. The intention of applying protective measures on a selective basis was not to limit the effect of protection but to penalize those who were successful and to avoid compensation and retaliation from those who were politically and economically powerful. The Multi-fibre Arrangement was a régime characterized by selectivity accompanied by discipline. The record of such a régime showed that there had been an extension of protective measures, progressive tightening of such measures and an increase of discrimination within the MFA. This representative asked if it was the intention of the Group to see this development in textiles spreading right across the entire trading system

and concluded by saying that selectivity in any form would lead to a contraction of world trade. One delegation said that Article XIX provided for the application of safeguards on a non-discriminatory basis, but there existed many "grey-area" measures which were completely selective. The Group should therefore concentrate on the question of how to introduce acceptable and credible rules and procedures to the area of safeguards rather than to engross itself with the question of m.f.n. or selectivity. The word "consensual" sounded nice, but consent would only come about from a situation of relative strength. A spokesman for a number of delegations said that in order to better understand the various options, it would be necessary to examine these options in the light of Section 301 of the United States legislation which permitted unilateral actions under certain circumstances. Such a legislation was one of the imbalances in the negotiations. One delegation said that selectivity should in no case apply to developing countries. Some delegations said that they preferred Option 1.

4. One delegation said that the status quo was not a valid option. It would be unrealistic to expect countries which had traditionally been applying Article XIX actions on an m.f.n. basis to continue to restrict themselves to that form of safeguards or to envisage further formal disciplines on the use of Article XIX unless all forms of restraints on imports were subject to discipline. There should be an international consensus on a real and binding prohibition on selectivity. This would bring all "grey-area" measures under the discipline of a code which amplified and strengthened the m.f.n. application of Article XIX. This would be possible in a broad and balanced negotiation which (a) encompassed all forms of safeguards, so that no signatory, developing or developed, had a preferred position enabling it to postpone or block trade liberalization and structural adjustment and (b) featured significant recognition by those with special interest in the safeguards negotiations of their responsibilities, for instance, to make appropriate contribution to improve market access.

#### Nature of the measure

5. One delegation said that it preferred surtaxes over quantitative restraints as the form of safeguard measures.

#### Degressivity and structural adjustment

6. One delegation said that it had strong reservations about any proposal which suggested that governments or industry associations should develop or approve adjustment measures for firms receiving import relief because it did not believe that governments or industry associations could be better judges than the market place of what was in the firms' interests. The same delegation said that degressivity was critical for the purpose of keeping pressure on firms to adjust. One delegation commented that intervention by governments or industry associations already existed in many countries,

either in their adjustment assistance programmes or in their measures taken at the border.

7. Another delegation said that safeguard actions should not be a substitute for structural adjustment. When a safeguard measure was taken, further consideration should be given to obliging the importing country to promote adjustment for its domestic industry with multilateral review of its effectiveness.

#### Compensation and retaliation

8. One delegation said that it supported a review of the vehicles for rebalancing concessions impaired by safeguards with provision for strengthening compensation as opposed to retaliation.

#### II. Future work and date of next meeting

9. The Group agreed to the Chairman's proposal that it begin to examine individual specific elements and that at its next meeting such examination should start with the concept of "serious injury or threat thereof", on the understanding that nothing would prevent the discussion of related issues when this element was being addressed.

10. It was agreed that the Group would indicate to GNG its preference for the week commencing 29 February 1988 as the date for its next meeting.