

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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

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COMMUNICATION FROM INDIA

The attached working paper is being circulated to members of the Group at the request of the Delegation of India.

1. The Indian delegation submits this working paper to the Negotiating Group on Safeguards as a contribution for furthering work in the area.

General

2. The idea underlying Article XIX of GATT is to enable contracting parties to provide breathing space to an industry faced suddenly with new conditions of competition, and not pass on the burden of adjustment to exporters. During the period of temporary relief the industry can take a decision on whether it is expedient to try to become competitive or to vacate the line of production. Safeguard measures also serve the purpose of distributing equitably the burden of adjustment over producers and consumers. It follows from these twin objectives that safeguard measures can have justification only if they are temporary. Further it is difficult to derive from these objectives any rationale for discriminatory application of safeguard measures. The Negotiating Group on Safeguards should therefore aim at a comprehensive understanding which ensures that all safeguard action is taken only temporarily and on a non-discriminatory basis.

Transparency

3. Paragraph 2 of Article XIX provides that as far in advance as may be practicable before taking action, the country contemplating safeguard measures should give notice in writing to the CONTRACTING PARTIES and afford them and those contracting parties which have a substantial interest as exporters an opportunity to consult with it. In critical cases where irreparable damage is likely in the event of delay Contracting Parties have a right to take decision without prior consultation on the condition that it would be held post hoc. The notification should contain

all particulars which may enable affected contracting parties to be satisfied that the conditions and objective criteria of safeguard action have been met.

4. The understanding should require the notification of all existing measures which are not based on GATT but which act as substitutes for safeguard action. These include VERs, OMAs, price monitoring schemes, inter-industry agreements, export forecasting and similar arrangements.

Coverage

5. The understanding should explicitly prohibit selective safeguard action whether taken overtly under Article XIX or by circumventing GATT through alternative measures. Very strong political and economic arguments exist in favour of reaffirmation of the m.f.n. principle. Departure from this principle will not only make recourse to safeguard action more frequent but also the weaker nations more vulnerable. In terms of economic efficiency, discrimination for penalising the most efficient supplying country does not make sense. It is also not equitable to selectively determine who should bear the consequences of the safeguard action.

6. VERs, OMAs, other discriminatory grey area measures and the extension of MFA would become impermissible. All such measures will have to be brought in conformity with the provisions of the comprehensive understanding or eliminated.

Objective Criteria

7. An important element of the new understanding will have to be precise elaboration of the concept of serious injury. This will require enumeration of factors which have to be examined to enable determination of the health of domestic industry. No one factor should be singled out for the purpose. Further, what has to be considered

is not only the extent of market penetration but also the rapidity of increase in the market of imports. For safeguard action to be taken, a direct causal link must be established between increased imports and serious injury.

Temporary Nature, Degressivity and Structural Adjustment

8. The objective of ensuring the temporariness of safeguard measures is fundamental. If safeguard action is necessary only to give the industry the breathing time to adjust to new conditions of competition and also to spread equitably the burden of adjustment among the various segments of society, it has to be temporary. It is necessary to prescribe a short and specific time-limit for safeguard action. Any continuation of such action beyond this period would have to be accompanied by the implementation of domestic measures to induce structural adjustment. Such continuation shall not exceed a maximum time-limit to be laid down in the comprehensive understanding. Extension would be conditional on authorization by the Committee on Safeguards. In considering the period of extension, the Committee shall give due regard to the interests of developing countries. To ensure temporariness, there will also have to be a requirement for progressive liberalisation of the measure.

Compensation and Retaliation

9. Once it is ensured that the safeguard measure is temporary, the question of compensation and the provision for retaliation become less important. Retaliatory withdrawal or compensatory offer may give Article XIX action a bias towards permanence. Nevertheless, the possibility of compensation may be considered under certain circumstances, particularly when continued safeguard action adversely affects the exports of developing countries.

Multilateral Surveillance

10. A committee on Safeguards will have to be established for giving the CONTRACTING PARTIES the opportunity for consultations on matters relating to the operation of the understanding, reviewing safeguard actions periodically, authorising their continuation beyond the initial period, monitoring phase-out and elimination, as necessary, of pre-existing measures referred to in paragraph 6 above, encouraging mutual settlement of dispute and finally helping resolve disputes where conciliation fails.

Legal mechanism

11. Among the alternatives of (i) amendment to GATT, (ii) adoption of a code, or (iii) adoption of an understanding by consensus, India's preference would be to adopt the understanding by consensus. This is the only way by which adherence to the understanding by all contracting parties can be ensured.
