

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on Safeguards

COMMUNICATION BY THE NORDIC COUNTRIES

With a view to contributing to the fulfilment of the negotiating objective on safeguards, the Nordic countries hereby submit a communication reflecting their views and opinions on a number of factors relevant to the safeguards negotiations.

I. THE ISSUE

1. The General Agreement contains several articles and provisions of a safeguard nature (Articles XII, XVIII, XX, XXI and others), the point of departure of which is based on fundamentally different considerations - as are the responses offered by the respective provisions.
2. As the issue of safeguards affects the very balance of rights and obligations of contracting parties under the General Agreement, linkages can be made to virtually any GATT provision. There is thus a need to distinguish between the scope of the issue as such, and the scope of the issue to be negotiated in the Negotiating Group on Safeguards. The latter should be confined to the rules and disciplines applicable for the withdrawal of GATT concessions in an emergency situation as stipulated by the current Article XIX. The linkages to other topics and negotiating groups are real and highly important, but in a negotiating context these linkages can best be addressed by seeking mutually reinforcing solutions in the respective fora.
3. Since safeguard measures invariably imply the withdrawal of GATT concessions, the negotiations will have to take appropriately into account the fact that the level of concessions entered into under the General Agreement differs significantly among contracting parties. Thus, the higher the level of GATT commitments, the greater is the exposure to emergency actions necessitating the withdrawal of concessions. Conversely, the fewer commitments, the lesser is the need for taking trade measures involving the withdrawal of such concessions.

II. THE OBJECTIVE

4. The objective of the safeguards negotiations has to be seen in the light of the objective of the GATT itself, namely to promote structural adjustment and the liberalization of trade. The lack of a fully operational safeguard system affects negatively this objective by casting doubts about the value of existing concessions and reducing the political willingness and ability to take on new ones.

5. The negotiating mandate calls for a comprehensive agreement on safeguards and states that this is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations. For a safeguards agreement to be truly comprehensive it would have to:

- (i) apply to all products;
- (ii) apply to all contracting parties, cf. third indent of the mandate;
- (iii) ensure that all safeguard measures are taken on the basis of multilaterally developed rules and disciplines within the framework of the General Agreement.

6. To the extent that a proposal falls short of meeting one or more of these criteria it must be considered as an inadequate solution, which would aggravate an already growing credibility problem of the General Agreement.

III. THE ELEMENTS

7. The negotiating mandate contains a number of elements to be included in a comprehensive agreement on safeguards. When elaborating these elements - and others - it is essential to bear in mind that the respective elements can never be appropriately dealt with one by one. Their real value will always have to be assessed in view of whether or not they together form a whole conducive to the negotiating objective. The comments made below on individual elements have been made in that perspective.

A. TRANSPARENCY

8. In the context of the safeguards negotiations transparency is an essential element at all stages of the procedures governing the application of safeguard measures in order to ensure that all measures are taken on the basis of, and in conformity with, multilaterally developed GATT rules and disciplines. Thus, adequate transparency will have to be reflected in, inter alia, the requirements for notification, consultation and surveillance. At the same time - and underpinning the need for a truly comprehensive solution - the value of transparency becomes grossly deflated unless all safeguard measures are actually subject to multilateral discipline.

B. OBJECTIVE CRITERIA FOR ACTION

9. The challenge in the safeguards negotiations is to strike the proper balance between deterrence, and the need for clear-cut and operational rules for emergency actions. Article XIX:1(a) contains by and large the elements needed to establish a set of objective criteria for emergency action on imports. On the one hand, the actions must be the result of unforeseen developments and of the effect of the "obligations incurred by a contracting

party under this Agreement ...". In other words, few or no obligations, little or nothing to withdraw. On the other hand, imports must cause or threaten serious injury to domestic producers, i.e. the causal link between imports and injury.

10. With regard to the serious injury or threat thereof determination, a contracting party taking resort to safeguard measures in an emergency situation should be required to justify such a determination with the help of an indicative list of factors deemed to be of relevance for measures of this kind, reflecting the heterogeneity of safeguard situations and measures. The causal link between imports and injury is reflected in Article XIX:1(a) by the reference to the "effect of the obligations incurred by a contracting party ...". While this causal link is an essential feature of the objective criteria for action, there are limitations to what extent it is possible to objectively quantify the degree of injury attributable to imports and other factors affecting the industry in question. Consequently, there may be arguments in favour of establishing the causal link in individual cases primarily on the basis of sufficient factual information regarding both the development of imports and other factors applied to determine injury to be provided when notifying the introduction of safeguard measures.

11. It is important to retain the "threat thereof" - part of the injury criteria. The overriding objective of the General Agreement and of its safeguards provisions is to facilitate structural adjustment and to promote the liberalization of trade. By deleting the possibility to take action on the basis of a threat of serious injury, the result might be more long-term protective measures which would run counter to the aforementioned objective.

C. TEMPORARY NATURE

12. There is general consensus that safeguard measures shall be of a temporary nature and as short-lived as possible. Article XIX:1(a) stipulates that these measures may be enforced "for such time as may be necessary to prevent or remedy such injury ...". In the context of the safeguards negotiations, the question arises whether the insertion of a specific deadline, beyond which the measures concerned could not be extended, would be conducive to this goal.

13. Bearing in mind that safeguard measures may have a normal time-span ranging from a couple of months to several years it should be considered whether or not one deadline on the whole would actually be (i) feasible; and (ii) short-lived as possible. There appears to be good arguments in favour of fulfilling this objective by, inter alia, a combination of requirements to stipulate a deadline at the outset, and obligations to let the measure and developments in imports and in the industry concerned by subject to regular review mechanisms.

D. DEGRESSIVITY AND STRUCTURAL ADJUSTMENT

14. The motivation behind safeguard measures is to provide the industry in question with a breathing space allowing it to adjust under socially and economically acceptable conditions. In this perspective, an element of degressivity constitutes a logical way of unwinding the restrictions and of preparing the industry for the return of the regular competitive environment. The element of degressivity thus deserves emphasis in a comprehensive agreement on safeguards, but provision regarding its implementation should principally be directed at measures lasting, relatively speaking, a longer period of time. For measures not exceeding one year, degressivity requirements would by and large be irrelevant.

15. The very aim of safeguard measures should be to facilitate structural adjustment, and not to stall it. From a GATT perspective, as well as from the perspective of a comprehensive safeguards agreement, a clear distinction should be made between the responsibility to undertake structural adjustment, and the responsibility to fulfil GATT commitments and concessions granted in that respect. The former lies with the industry itself, the latter with governments. In practical terms, this means that the commitments under a safeguards agreement relevant to the facilitation of structural adjustment should be confined to restoring the GATT concession temporarily withdrawn.

E. COMPENSATION AND RETALIATION

16. Safeguard measures inevitably have an impact on the balance of rights and obligations under the General Agreement. A safeguards agreement must ensure that this balance is not inappropriately upset. Article XIX:3(a) provides an opportunity to suspend "substantially equivalent concessions", the consequence of which is that a contracting party's ability to retaliate often becomes a function of its own level of GATT obligations. A practice of seeking compensation first, together with the retaliatory possibilities offered under Article XIX:3(a) would appear to be a balanced compromise, taking into account different sets of interests.

F. COVERAGE

(i) Nature of measure

17. Emergency situations giving rise to safeguard measures are bound to be highly heterogeneous. While it can be argued that tariffs in many instances offer the least disruptive effect on trade, other types of restrictions might be equally suited and should therefore - as is the case today - also be permitted.

(ii) Product coverage

18. A comprehensive agreement on safeguards should continue to be applicable to all product categories.

(iii)Geographical coverage

19. The issue of geographical coverage of safeguard measures has been at the core of the safeguards negotiations for a decade and a half. More than anytime before there is a need to approach this issue in the light of the overriding disciplines of the General Agreement. There is little purpose in clarifying and reinforcing the disciplines if those disciplines are not applied by all contracting parties. It is therefore essential that a comprehensive agreement on safeguards deals effectively with the question of "grey-area" measures. That is the fundamental challenge of the Negotiating Group on Safeguards.

20. The "grey-area" measures have a common feature in the sense that they are all "non-m.f.n.". Furthermore, they are not subject to any multilateral disciplines. It seems hardly realistic to believe that the "grey area" will disappear simply by being banned. The motives behind the scope of these measures are too diverse and reflect too significant interests economically and politically for such an option to be viable.

21. The safeguards negotiations should definitely not seek to adapt good rules to bad practices. At the same time, there are choices to be made which are considerably more complex than the issue of geographical coverage itself. Also this element will have to be assessed in view of whether or not the modalities are conducive to the negotiating objective, namely a comprehensive agreement on safeguards.

22. Another feature of the "grey area" is that it normally involves some kind of negotiated settlement between the parties in question, i.e. a de facto withdrawal of GATT concessions resulting from decisions taken by two or a limited number of contracting parties. These measures are often taken outside and in violation of the General Agreement, thus reflecting the possibilities and constraints of the relevant contracting parties' bilateral bargaining power. In a comprehensive agreement on safeguards, it is important to retain the unilateral character of the decision to take safeguard measures in an emergency situation. It would negatively affect the balance of rights and obligations among contracting parties if the requirements for taking such action were not equal for all, but subject to negotiations in individual cases.

G. NOTIFICATION, CONSULTATION, MULTILATERAL SURVEILLANCE AND DISPUTE SETTLEMENT

23. Provisions to notify and consult will always be a function of the commitments and obligations relevant to the introduction and implementation of safeguard measures. The content of the requirements regarding notification and consultation must therefore be elaborated in conjunction with the other elements of an agreement.

24. In respect of the notifications and consultation requirements upon the introduction of a measure, Article XIX:2 contains reasonable and clear-cut provisions which by and large should serve the interest of all parties concerned.

25. For a variety of reasons, transparency remains important beyond the introduction phase of a safeguard measure. An agreement should therefore include provisions that would make the measures subject to a multilateral review mechanism, at appropriate and regular intervals.

26. Such an exercise of multilateral consultations and reviews could best be conducted in a separate body established for that purpose, a Safeguards Committee. While the rôle and responsibility of this committee should be fairly specific in terms of contracting parties' requirements to notify, consult and review, the basic right of contracting parties to seek recourse to the dispute settlement provisions in Article XXIII should not be affected.