

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNG/NG9/W/18
10 June 1988
Special Distribution

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

Original: Spanish

COMMUNICATION BY MEXICO

The following proposal by Mexico is being circulated to members of the Group at the request of the Mexican delegation.

THIS COMMUNICATION CONTAINS THE PROPOSAL BY MEXICO
AS A CONTRIBUTION TO THE WORK OF THE
NEGOTIATING GROUP ON SAFEGUARDS

Proposal by Mexico on Safeguards

Introduction

1. Mexico attaches particular importance to the proper functioning of the escape clause (Article XIX) and considers that the non-discriminatory application of that clause is the main attraction for developing countries acceding to the GATT. At present, however, it appears that the usefulness of Article XIX is minimal, since some countries act outside the provisions of the Article:

- (a) they apply import restrictions on a discriminatory basis, in breach of the basic Most-Favoured-Nation principle;
- (b) they avoid compensating exporting contracting parties adversely affected by the action they have taken;
- (c) they contravene the fundamental GATT principles of trade expansion and elimination of trade barriers, creating some barriers that are not subject to national or international scrutiny;
- (d) they eliminate the comparative advantage of developing countries in some areas of production in which the latter are truly efficient; and
- (e) these "grey area" measures are primarily used against developing countries, when in fact the problem is caused by the loss of competitiveness of traditional industries in industrialized countries, which by failing to tackle the problem in a

responsible manner create repercussions in areas that are particularly important for the economic development of developing countries, such as:

- (i) balance-of-payments and employment (since in many cases the developing countries' exports concern labour-intensive products); and in addition they create
- (ii) an indirect effect of this new form of protectionism which, by its lack of transparency, unpredictability and ease of application, leads developing countries to resist liberalization of trade because they recognize that the system is unfair, although in various forums they are encouraged and pressured to advance along that path.

2. Mexico considers that the GATT safeguards provisions in Article XIX should be broadened and clarified in order to ensure that contracting parties do not act outside them. It is therefore necessary to seek appropriate safeguards machinery which will enable grey area measures to be eliminated while encouraging the solution of such problems within a framework of principles and rules of the General Agreement.

3. Mexico therefore submits the following proposal as an attempt to shed light on the problem, reconcile the various interests and positions through a comprehensive and innovative approach, and stimulate discussion on a new approach to the multilateral safeguards system.

4. It is particularly important to stress at the outset that the most important factor in this proposal is the political will which contracting parties participating in these multilateral trade negotiations will have to display; without it, no solution is possible.

Proposal

5. The discussion should be reoriented, taking the following as a starting point:

Article XIX has three basic elements:

- (i) a sudden increase in imports;
- (ii) as a result of unforeseen developments through the effect of a concession or obligation stemming from the General Agreement;
- (iii) that causes or threatens serious injury.

From these three basic elements we may infer the following:

1. That there must be a causal link between the three elements;

2. That the article is aimed towards the prevention and solution of conjunctural, emergency, short-term situations, and it may be pointed out, situations that were unforeseen at the time of negotiating a concession or adopting an obligation under the General Agreement, as is shown by the terms "sudden increase" and "unforeseen situation";

6. An increase in imports as a result of unforeseen developments and of the effect of obligations, including tariff concessions, can only happen after a period in which multilateral trade negotiations have just been held, as that is the only way in which the sudden increase in imports can be causally linked with an obligation or concession under the General Agreement. If a concession has been in force in GATT for, let us say, a period of fifteen years and then suddenly the features outlined above occur in the market for the product in question, it is questionable to assert that the problem is causally the result of the concession. It might rather be considered the result of a change in the structure of production and trade of the product in question, in other words a structural change, this being understood as a deep and lasting change in the competitive position of domestic products with respect to foreign products.

7. In addition, it appears from the consideration of "grey area" measures, both in this Negotiating Group and in other GATT bodies, that they are a response primarily to structural difficulties and to political pressures resulting from market developments that cause products, production and marketing methods, technology etc. to get out of line with the real market situation; in other words, there has been a deep and lasting change in the competitive position of domestic products. That is the case of steel, electronic goods, footwear, textiles, agricultural products and foodstuffs, and so forth.

8. In this context, and in view of the foregoing, we may be said to have two essentially different situations, one conjunctural (the case provided for by Article XIX) and the other structural. Moreover, the interpretation may be advanced that the latter, structural, situation is not at present specifically covered by the provisions of the General Agreement.

9. In the case where a problem of a structural nature exists, such as that mentioned above, it becomes necessary to provide relief for industries adversely affected by foreign competition, giving them time in principle to undertake the necessary adjustments to recover their external competitiveness. Since these cases are not covered by appropriate provisions of the General Agreement, the voluntary export restraint agreements have arisen, applied by countries whose producers are suffering injury because their industry is now obsolete and inefficient and cannot compete with the more efficient industries of other countries. There are various advantages in negotiating illegal "grey area" measures for the countries that apply them: they do not need to provide compensation for the action taken, they can avoid a domestic legislative battle since the action is taken by a foreign source, and the agreements can be negotiated rapidly without their costs being clearly apparent, among other things.

10. It has been observed that the selective application of non-tariff barriers does very little to resolve the problem which is rooted in the domestic industry's loss of competitiveness. The problem is partly shifted to other countries and products, thus strengthening the tendency towards the proliferation of such measures. The clearest example of this is the Multifibres Arrangement, but it is also true in the case of footwear and steel.

11. In addition, "grey area" measures tend to have a comparatively greater impact on developing countries which have become efficient producers in traditional industries, perhaps because of their weak bargaining position.

12. Basic elements for a new approach in the field of safeguards:

- (a) Establishment of a Safeguards Surveillance Body or Safeguards Committee.
- (b) Explicit confirmation that Article XIX action should be taken solely in the case of a conjunctural, emergency, short-term imbalance caused by a sudden increase in imports linked with concessions or obligations under the General Agreement that cause or threaten serious injury to domestic producers.

- Under this approach, it would be essential to demonstrate the causal link between the three basic elements of Article XIX. The action taken must be exclusively short-term to correct a conjunctural or cyclical imbalance. The measures will therefore concern imports, preferably through tariffs. The Surveillance Body will supervise the period of application, which will be twelve months with the option of extension for a further six months, provided the serious injury has been shown to persist after one year.

Since this action will be of very short duration, owing to its conjunctural nature, payment of compensation will not be a serious burden for the country applying the measures.

- (c) If the problem caused to domestic producers is not resolved after twelve or eighteen months (as the case may be), the conclusion may be drawn that the direct causes of the problem do not correspond to the case provided for in Article XIX, in other words they are not conjunctural, and therefore it would be appropriate for the Surveillance Body/Safeguards Committee to authorize:

- (i) Renegotiation of the concession on the basis of a more flexible Article XXVIII. (Article XXVIII is under consideration in the Negotiating Group on GATT Articles.)

- For a country to be able to renegotiate a specific concession under this procedure, it would have to show

that during twelve or eighteen months it had already applied border measures to try to correct the imbalance. Thus the discipline of Article XXVIII would not be relaxed, and concessions would not be undermined; or

- (ii) An industrial restructuring programme in accordance with the following paragraph.
- (d) The contents of this paragraph could be invoked without necessarily first passing through the application of Article XIX measures, if the problem is known to be a structural one.

When a contracting party considers that its domestic producers are suffering or threatened by injury as a result of a sudden increase in imports stemming from a change in their competitive position, it should refer the case to the Surveillance Body/Safeguards Committee with an analysis of the possible causes of the injury suffered, and including a programme of action to restructure the industry.

- When the Surveillance Body/Safeguards Committee, having examined the case, confirms that the problem is indeed structural, in other words, that industrial restructuring is called for, the country whose industry requires adjustment may notify to the Committee a plan containing the structural adjustment measures it considers appropriate, which will enable the State to provide assistance to facilitate the adjustment.
- (e) The country which needs to take action to deal with structural problems may apply domestic adjustment measures that will be strictly confined to those recognized in the Subsidies Code, especially Article 11, paragraphs 1(b) and 3, and covered by the disciplines and rights of the Code (Article 8) and the General Agreement. Thus, the new "grey area" problems will be resolved in a transparent manner and through measures that cause the least possible distortion to international trade, without having to resort to Article XIX.

