

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/7/Add.1

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

MEETING OF 14-15 JULY 1988

Note by the Secretariat

Addendum

1. MTN.GNG/NG9/7 dated 22 July 1988 is a note by the Chairman setting out some of the main points raised at the meeting of the Negotiating Group on 14 and 15 July 1988. 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 Group.

I. General

2. The representative of Switzerland introduced a proposal in document MTN.GNG/NG9/W/20 which supplements an earlier proposal in MTN.GNG/NG9/W/10.

3. In response to comments by several delegations and by the Chairman on the Nordic proposal in document MTN.GNG/NG9/W/16, the representative of Norway said that the paper by the Nordic countries was intended to be a comprehensive one. The first question asked by the Nordic paper was whether and how a fuller, better, and more comprehensive safeguard system could be achieved. There was nothing wrong with Article XIX per se. The trouble was that the Article was not followed and there were a large number of grey-area measures taken outside the Article. It would therefore be imperative that rules to be agreed in the end would take care of the grey-area measures. The Nordic position on structural adjustment was a moderate one. It was unavoidable for governments to provide aids, subsidies and other internal measures to improve the structures of industries because to leave structural adjustment entirely to the market forces would give rise to problems of injustice and instability. The obligations of governments vis-à-vis GATT were by and large in respect of measures at the border. The Nordic countries were in favour of having a maximum period for safeguard actions but they also saw the danger of the tendency of the maximum period becoming the standard period. That was why they proposed a combination of requirements, stipulating a deadline at the outset, and containing obligations to let the measure and developments in imports be subject to regular reviews.

4. Several delegations made comments and sought clarification on specific points in the Mexican proposal in MTN.GNG/NG9/W/18. In response to these, the representative of Mexico said that it was not easy to distinguish

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between conjunctural and structural problems. The judgement had to be made by the party taking safeguard measures. If a party considered that it was faced with a conjunctural problem which could be solved within a short period of time, then it should take action under Article XIX, preferably tariff action, for a twelve-month period with a possible six-month extension. However, if a party considered that its problem was a structural one, then it could either undertake an industrial restructuring programme confined to measures recognized under Articles 8 and 11 of the Subsidies Code, or carry out renegotiations under Article XXVIII. The proposal did not intend to create new obligations for governments and there should be no risk of proliferation of subsidies. Mexico believed that an increase in imports as a result of unforeseen developments and of the effect of obligations, including tariff concessions, could only happen during a period after multilateral trade negotiations had just been concluded. If a concession had been in force for a long time, then it could not be claimed that the problem was caused by the concession. The Mexican submission did not provide a total solution for the grey-area measures, but it proposed to establish rules to prevent the rights of other contracting parties from being impaired or nullified. The Surveillance Body or Safeguards Committee was set up in order to avoid any subjective judgement. In other words, it would verify, on a case by case basis, whether the problems presented pertained to a conjunctural or structural situation as claimed by the party concerned. Like many delegations, Mexico preferred a Safeguards Committee to a Surveillance Body, although it did not wish to prejudge the outcome of the negotiations in this respect.

II. Examination of individual specific elements

(a) Domestic adjustment assistance measures

5. Several delegations stressed the link between safeguard actions taken under Article XIX and structural adjustment and suggested that an appropriate programme of structural adjustment measures should be implemented during the period of application of a safeguard action, provided that such adjustment measures were consistent with GATT obligations such as those under Article XVI. An important incentive for inducing or encouraging structural adjustment would be introduced by making safeguard actions limited in time and degressive in nature. Any proposal for structural adjustment programmes should be subject to discipline in order to avoid the risk of spiralling subsidization which could exacerbate rather than remedy structural problems and which would be prejudicial to the interests of other countries. Several other delegations said that governmental involvement in structural adjustment measures should not be a prerequisite or obligation for the application of safeguard measures under Article XIX. Adjustment should be undertaken by firms themselves. It was difficult to envisage any adjustment programme, however positive, being mandated or written into an industrial policy article of the General Agreement, or being dictated by an international organization. Any attempt to formulate rules which might infringe on a country's ability to act in a particular manner would also create an extremely delicate situation. Furthermore, any decision to provide financial assistance to private enterprises would depend not only on the particular circumstances of each case but also on the general philosophy of each individual government.

6. One delegation pointed out that internal measures should be short-term, concrete, precise, and should help to re-establish the competitiveness of an industry and bring durable results. Thus, financial assistance or investment credits provided to firms should be reimbursed within a given time-frame. Such measures should be subject to a set of strict disciplines. Another delegation said that structural adjustment should basically be achieved through market mechanism. Government intervention could only retard the rate of adjustment and lead to the prolongation of safeguard measures. One representative described the adjustment assistance programmes in his country as very unsuccessful experiences. Very often, these programmes created new problems and distortions. They were expensive and difficult to administer. Subsidies tended to become permanent fixtures as a result of political and social pressure.

7. One representative referred to the ultimate goal of the Group which was to draw up a comprehensive agreement on safeguards, which, according to him, should cover two types of situation. The first related to a situation of short-term market disruption which did not necessarily call for structural adjustment. The other related to a situation of long-term difficulties where firms should be allowed time to adjust. In both cases, Article XIX could be invoked and governments should be allowed to choose, within the legal and economic contexts peculiar to each individual country, three categories of measures: (a) domestic adjustment measures such as vocational training, relocation of workers, financial assistance to firms, etc.; (b) border measures with degressivity and temporary nature which could induce enterprises to make adjustment efforts; and (c) a combination of the above two measures. It was important that all three categories of measures be accompanied by discipline. Domestic adjustment assistance measures should be preferred over border measures, despite disincentive created by the fact that certain contracting parties applied countervailing duty legislation when they were faced with problems created by such assistance.

(b) Compensation and retaliation

8. Several delegations stated that the most important aspect of the provision for retaliation contained in Article XIX, paragraph 3(a) was its deterrent effect. When governments were confronted with strong domestic pressures to adopt border measures, they had to consider very carefully the cost of taking such measures. Many believed that the more conditions and obligations imposed on the use of safeguard measures, such as time limits, degressivity, adjustment obligations, etc., the less might be the need for compensation or retaliation, because these conditions would mitigate the impact of the measures on exporting countries. One delegation pointed out that one of the negative aspects of compensation and retaliation was that they were an important factor leading to the spread of grey-area measures. Since a common concern of policy decision makers was to avoid paying compensation or suffering retaliation, and one way to do so was to enter into self-restraint agreements. These considerations had led to a host of VERs and similar arrangements. That was why one possible means of restoring the m.f.n. principle and other disciplines was to relieve the compensation and retaliation requirements.

9. One delegation said that Article XIX, paragraph 3 did not refer to compensation but to the suspension of equivalent concessions or obligations. Some problems had arisen in the past because of the imbalance of concessions made by different contracting parties. There were several kinds of disadvantages to compensation under Article XIX. First, safeguard actions taken for which compensation had been paid tended to last much longer than those taken without any compensation. Another disadvantage was that this type of compensation had become difficult for contracting parties which had assumed a high level of concessions in GATT. The third disadvantage was that compensation usually went to firms in exporting countries which were not involved in the case or which did not need it. That was why the practice of compensation had almost disappeared in recent years. Another delegation supported this argument and said that compensation should be temporary and should disappear once a safeguard action was terminated. A country receiving compensation might not be able to benefit from it before it was withdrawn. It was therefore an element which could destabilize the trade regime.

10. Many delegations suggested some considerations which should be taken into account in further discussions of the issue. Should there always be an automatic right to compensation and retaliation, regardless of the nature of the safeguard action, its duration and other conditions? Which supplying countries were entitled to compensation? How would the degree of compensation be measured? Would a set of strict disciplines, coupled with vigilant surveillance, be more effective than the threat of retaliation? Could collective sanctions replace retaliation?

(c) Notification and consultation

11. One delegation said that all safeguard measures taken should be notified at three stages: (i) when the investigatory process was initiated, (ii) when an injury finding was being made, and (iii) when a decision was taken to impose a safeguard action. Consultations should be offered to all interested parties at the initiation of investigations and, to the maximum extent possible, both before and after a decision was taken to impose a safeguard action. Actual requests for consultations should come from exporting countries, but the country taking the safeguard action should respond promptly. One representative suggested that it was important that the Negotiating Group should agree on a unified format for notification and consultation in order to provide a certain degree of automaticity and uniformity in the procedures. This suggestion was supported by another delegation which maintained that the main objective of notification and consultation was to facilitate transparency and understanding, and an agreed set of discipline governing the procedures would certainly help in the achievement of the objective.

12. As in the discussion of the last item, many delegations raised some points which should be taken up at future discussions. These delegations remarked that Article XIX itself did not give enough clear guidance on certain aspects of the procedures for notification and consultation. These included questions like: What kind of actions should be notified? Were

there time limits for notification or were there simply best-endeavour obligations? What did the word "agreement" in Article XIX 3(a) entail? Should any "agreement" be subject to review? Should any attempt be made to define "critical circumstance"?

III. Future work and date of next meeting

13. The Chairman said that the Group should have an opportunity at its next meeting to discuss the Swiss proposal again and other new proposals received from members of the Group. It would also take up the specific elements which were addressed for the first time during the present meeting, i.e. compensation and retaliation; and notification and consultation. It would start to address the elements of multilateral surveillance and dispute settlement; and coverage. At its next meeting the Group should aim to complete a first examination of individual specific elements. The Group would also take up the question of its contribution to the mid-term meeting scheduled for December in Montreal.

14. It was agreed that the next meeting of the Group should be held during the week beginning 26 September 1988, and that a further meeting should be scheduled for November if necessary.