

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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

SYNOPSIS OF PROPOSALS

Note by the Secretariat

1. This paper, which has been prepared by the secretariat on its own responsibility, provides a synoptic view of the main points made in proposals presented to the Negotiating Group and in notes on its meetings (see Annex). These are arranged under each of the specific elements enumerated in the Ministerial Declaration and additional elements identified in the Group. Efforts have been made to avoid repetition of points made. While this paper draws, as far as possible, on the original text of proposals, a paper such as this cannot reproduce all the nuances of the proposals themselves and should be read in conjunction with the basic documents.
2. This paper will be updated as negotiations in the Group progress.

Annex

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## Introduction

Some points made in the Group do not fall under any individual element. An example of this is provided by the following points on the scope of the Group's work.

1. The disciplines for the invocation of Article XIX should be clarified and reinforced (paragraph 4, MTN.GNG/NG9/1).
2. There is no logical connection between Article XIX, which provides for temporary relief from the effects of normal GATT obligations, and certain other GATT rules, such as those in Article VI on anti-dumping and countervailing, which have sometimes been loosely termed as "safeguards" but which in fact provide for counter-measures against specific sources of unfair trade practices (paragraph 3, MTN.GNG/NG9/W/8).
3. The Uruguay Round Negotiating Group on Safeguards is faced with two fundamental, somewhat contradictory challenges: (i) to provide clearly-elaborated rules and disciplines governing safeguards measures, while (ii) making the GATT safeguard provision sufficiently dynamic and credible so that nations will act under it, rather than outside it. Participants must carefully weigh these factors when developing a comprehensive safeguards agreement (paragraph 1, MTN.GNG/NG9/W/12).
4. 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 (paragraph 2, MTN.GNG/NG9/W/18).
5. Ensuring stricter application of Article XIX would not in itself be enough to remedy the situation because the inherent difficulties in Article XIX were the very reasons which had led to the avoidance of the application of the Article by many countries in taking safeguard actions (paragraph 4, MTN.GNG/NG9/1).
6. Various types of safeguard measures were being applied by contracting parties without the invocation of any GATT article and that had jeopardized the integrity of the multilateral trading system. The main task of the Group should therefore be to work out methods to bring discipline to the full range of safeguard measures (paragraph 4, MTN.GNG/NG9/1).
7. The Group had to work towards a credible and enforceable solution. A comprehensive agreement on safeguards had to come to grips with "grey-area" measures (paragraph 4, MTN.GNG/NG9/1).
8. The General Agreement does not deal with cases of structural difficulties of an industrial sector. In addition, it draws clear

distinctions between various cases of safeguard action, and does not contain any general provision designed to cover all possible grounds and types of measures. In order to cover structural difficulties, it is necessary to fill a gap with an adequate and explicit provision (paragraph 5, MTN.GNG/NG9/W/10).

9. Different safeguard measures will have to correspond to different situations. Accordingly, the General Agreement should contain as many safeguard clauses as there are types of situations to be covered. A standard safeguard clause is not desirable, whether in the form of a general clause, or in the form of extensive interpretation of one particular clause. Difficulties of a structural character constitute a situation that is not specifically covered by the provisions of the General Agreement. Having regard to the needs that emerge in practice, it is therefore desirable to fill this gap in the General Agreement through new provisions specifically devised to cover this type of case (paragraph IV, MTN.GNG/NG9/W/20).

A. Nature of the Measure

1. Safeguard actions would consist of only two kinds of measures: (a) domestic adjustment assistance measures, and (b) import relief measures. Domestic adjustment assistance measures consist of financial support given to firms in the sector affected, through direct subsidies to production or tax incentives. These could be resorted to on the basis of a determination by the applying contracting party of the existence of "serious injury" caused by "unforeseen, sudden and substantial increase in imports" of a given product. Import relief measures adopted as safeguard actions should only take the form of tariff increases to be adopted on an m.f.n. basis. They could be resorted to only after determination by the Surveillance Body of the persistence of a situation of "serious injury" caused by "unforeseen, sudden and substantial increase in imports" not remedied by the implementation of a programme of domestic adjustment assistance measures (paragraphs 4-9, MTN.GNG/NG9/W/3).

2. Safeguard measures shall normally take the form of tariffs. However, safeguard actions may take the form of quantitative restrictions, in which case the level for the first 12-month period shall not be set below the average level of imports of the particular product concerned during a recent representative period ending immediately prior to the date of notification of the measure. Such a representative period should not include any time during which imports of the particular product concerned were insignificant (paragraph 2(b), MTN.GNG/NG9/W/4).

3. Import relief measures should take the form of tariff actions. If they take the form of quantitative restrictions they shall be upon authorization of a special body (paragraph 5, MTN.GNG/NG9/W/9).

4. The measures under which country quotas were to be distributed should ensure that the market was not closed to potential and small suppliers (paragraph 14, MTN.GNG/NG9/2).

5. No import relief measures should be permitted to be taken unless the contracting party seeking to apply such action has previously adopted adjustment assistance measures in the industry or sector which is affected by import competition (paragraph 5, MTN.GNG/NG9/W/9).

6. It would be best to discourage action at the frontier taken for structural reasons, while on the other hand accepting that governments should take certain domestic measures as part of a structural adjustment programme, initially by the private sector and secondarily by the government, in situation where the normal process of structural adjustment cannot take place through the sole efforts of a sector concerned. In other words, it would be a question of defining what domestic measures would be acceptable and what action would be prohibited. In the event that it proved that safeguards at the border should nevertheless and in addition still be authorized, it would be desirable to subject them to the most vigorous and strict discipline (paragraphs 6 and 7, MTN.GNG/NG9/W/10).

7. Article XIX spoke of suspension of obligation and withdrawal of concession which encompass more than just tariff measures. Since the levels of tariff bindings of contracting parties were not perfectly balanced and in view of the monetary fluctuations in the field of exchange rates, the proposal to allow safeguard actions in the form of tariff measures only would create a serious disequilibrium (paragraph 14, MTN.GNG/NG9/2).

## B. Coverage

### (a) Geographic coverage

1. Negotiations on safeguards should be conducted on the basis of the basic principles of the General Agreement. These included the basic principles of most-favoured-nation treatment and non-discrimination which were non-negotiable (paragraph 3, MTN.GNG/NG9/1).

2. All safeguard measures under Article XIX shall be applied erga omnes without discrimination among contracting parties. They shall be applied only to particular products and shall not be subject to any devices that might produce a narrow and selective definition of source (paragraph 2(a), MTN.GNG/NG9/W/4).

3. Selectivity in any form would be a step backwards. An agreement permitting selectivity would legitimize "grey-area" measures, lead to more market-sharing arrangements with wider coverage of products and would stifle the economic development of developing countries. The MFA was an example of

the gradual deterioration of discipline and the increasing restrictiveness of a selective safeguards arrangement (paragraph 3, MTN.GNG/NG9/1).

4. 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 (paragraph 3, MTN.GNG/NG9/4).

5. The safeguard negotiations should definitely not seek to adopt 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 (paragraph 21, MTN.GNG/NG9/W/16).

6. The term "consensual selectivity" sounded nice, but consent would only come about from a situation of relative strength (paragraph 3, MTN.GNG/NG9/4).

7. 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 in 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, developed or developing, 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 (paragraph 4, MTN.GNG/NG9/4).

8. Each element in any negotiation has its price if a compromise is to be found. Furthermore, if Article XIX is read literally, it could mean that all obligations including those in Article I could be waived (paragraph 13, MTN.GNG/NG9/2).

9. The bedrock foundation of the GATT was the most-favoured nation principle. However, ways and means would have to be found to ensure that safeguard actions, regardless of their form, were taken only as exceptions and in conformity with meaningful and enforceable GATT discipline (paragraph 6, MTN.GNG/NG9/3/Add.1).

10. There is much to be said for this notion (the m.f.n. principle), as the spread of selective measures is arguably undermining the liberal trading system. Indeed, the m.f.n. principle is a cornerstone of the GATT; the

preamble of the Agreement calls for the elimination of discriminatory trade practices as a prerequisite for economic growth. Adherence to the m.f.n. principle ensures that the contracting parties selling a good are the most competitive producers - not just the most adept or powerful negotiators. Conversely, selectivity moves trade away from the principles of the marketplace and into the political arena. On the other hand, maintenance of a strict m.f.n. principle may, in the final analysis, increase the tendency of countries to take what are essentially safeguard measures under other GATT provisions, such as the balance of payments and unfair trade provisions or outside GATT disciplines altogether (pages 3 and 4, MTN.GNG/NG9/W/12).

(b) Product coverage

1. An agreement on safeguards should in principle apply eventually to all products including textiles (paragraph 16, MTN.GNG/NG9/W/8).
2. A comprehensive agreement on safeguards should continue to be applicable to all product categories (paragraph 18, MTN.GNG/NG9/W/16).
3. Safeguard clauses in the area of agriculture must be negotiated in the Negotiating Group on Agricultural trade which has primary responsibility for all aspects of agriculture (paragraph II.7, MTN.GNG/NG9/W/20).
4. To prevent circumvention of the non-discriminatory principle, over-definition of the characteristics of a product such as price, quality or other physical attribution should be disallowed (paragraph 11, MTN.GNG/NG9/W/8).

C. Injury and threat thereof

1. Safeguard actions would cover emergency situations having to do solely with "serious injury" to domestic producers deriving from unforeseen sudden and substantial increases in imports of specific products traded in accordance with GATT rules. In a situation of "threat of injury", where the injury can be foreseen, appropriate negotiations under Article XXVIII would be called for (paragraph 2, MTN.GNG/NG9/W/3).
2. The determination of serious injury or threat thereof shall depend on the establishment of a direct causal link between increased imports and an overall decline in the condition of domestic producers. In making such a determination, the relevant factors to be taken into account include, inter alia, output, sales, export performance, inventories, profits, productivity, return on investment, utilization of capacity, employment and wages. No one or several of these factors can necessarily give decisive guidance. However, serious injury cannot be deemed to exist where factors such as technological changes or changes in consumer preference or similar factors are instrumental in switches to like and/or directly competitive

products made by the same domestic producers (paragraph 1(b), MTN.GNG/NG9/W/4).

3. Factors such as market share, diversion of trade, technological changes and changes in consumer preferences, overall competitiveness of industry and its ability to generate capital, could also be included in determining injury on a case-by-case basis (paragraph 4, MTN.GNG/NG9/3/Add.1).

4. With respect to serious injury, such economic factors included, but were not limited to, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or under-employment within the industry. With respect to threat of injury, the factors included a decline in sales, a higher and growing inventory and a downward trend in production, profits, wages, or employment in the domestic industry concerned. The term "significant idling of productive facilities" included the closing of plants or the under-utilization of production capacity. The term "threat" was defined as occurring "when serious injury, although not yet existing, is clearly imminent if import trends continue unabated". This definition required that serious injury be a virtual certainty in the foreseeable future rather than a mere possibility. "Substantial cause" was defined as "a cause which is important and not less than any other cause" (paragraph 7, MTN.GNG/NG9/5).

5. Some of the relevant factors for the determination of serious injury should be quantifiable (paragraph 10, MTN.GNG/NG9/2).

6. It was unrealistic to set quantitative standards or automatic criteria for the determination of injury because not all factors were quantifiable and mathematical formulae could not be applied to all sectors of industry. Instead, economic factors and indices should be considered together with some subjective parameters. It was not possible to determine the order of priority for various factors when determining injury or threat thereof (paragraph 10, MTN.GNG/NG9/5).

7. How can one reconcile the list of factors (paragraph 2 above), some of which clearly non-operational, with a situation of emergency? (Paragraph 10, MTN.GNG/NG9/2).

8. Negotiations under Article XXVIII could not deal with a situation of threat of injury because such negotiations were usually lengthy while a situation of threat of injury represented some sort of emergency where quick remedies were required (paragraph 5, MTN.GNG/NG9/3/Add.1).

9. If a threat of injury could no longer be a justification for action under Article XIX, the result would probably be an expansion of the scope and trade effect of safeguard action (paragraph 5, MTN.GNG/NG9/3/Add.1).



10. To arrive at some commonly accepted objective criteria for the determination of serious injury might pose two technical problems. The first was the problem of economic analysis, i.e. how to determine the features of injury caused by imports. The second was the problem of statistical methodology, i.e. how to obtain the required quantitative information. It would be useful to establish, under the auspices of GATT, an international group of experts to work out the methodology for the determination of such criteria (paragraph 8, MTN.GNG/NG9/6).

11. The principal cause of serious injury or threat thereof must be increase in imports, while other economic factors relating to the sectors concerned should be taken into account in a comprehensive manner (paragraph 4, MTN.GNG/NG9/3/Add.1).

12. Increases in import could be either absolute or relative (paragraph 4, MTN.GNG/NG9/3/Add.1).

13. What has to be considered is not only the extent of market penetration but also the rapidity of increase in the market of imports (paragraph 7, MTN.GNG/NG9/W/15).

14. If there were a multitude of causes, then it had to be established that increased imports was the principal cause, not just an important or substantive cause (paragraph 14, MTN.GNG/NG9/5).

15. An increase in imports per se should not be the determining basis for emergency action, especially in the case of well-established industries in developed countries (paragraph 14, MTN.GNG/NG9/5).

16. The potential of imports from developing countries, especially small suppliers, to cause injury was extremely limited. This was an important point to be included in the determination of serious injury (paragraph 12, MTN.GNG/NG9/5).

17. While the causal link between imports and injury 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 (paragraph 10, MTN.GNG/NG9/W/16).

18. The domestic industry consisted of the producers of articles that were "like or directly competitive" with the imported articles. "Like" articles were defined as those which were "substantially identical in inherent or intrinsic characteristics" and "directly competitive" articles as those which "although not substantially identical in their inherent or intrinsic

characteristics, are substantially equivalent for commercial purposes". The increased imports requirement provided that the increase had to be "either actual or relative to domestic production" (paragraph 7, MTN.GNG/NG9/5).

19. There should be limits on both the up-stream and down-stream of products to qualify as "like or directly competitive products" (paragraph 16, MTN.GNG/NG9/5).

20. Safeguard measures must be conceived and applied strictly to domestic industries in the domestic market only, and not given wider application through measures sought in respect of third markets (paragraph 17, MTN.GNG/NG9/5).

D. Temporary Nature

1. All safeguard measures shall be temporary and shall be applied for a period of not more than three years (paragraph 4, MTN.GNG/NG9/W/4).

2. Exceptionally a safeguard measure may be extended provided the following conditions are fully observed:

- (a) a comprehensive review of the original determination of serious injury to the domestic producers is to be conducted by the government maintaining the safeguard measure. If such a review demonstrates that a threat of serious injury to the domestic producers would arise if the measure were to lapse, the government maintaining the measure shall report fully the results of the review with all supporting data and notify the intention to extend the measure to the CONTRACTING PARTIES and shall afford affected contracting parties the opportunity to consult, with regard, inter alia, to compensation, no later than three months before the expiry date of the measures;
- (b) a programme of structural adjustment for the domestic producers has commenced during the period of the application of the safeguard measures; and
- (c) the total duration of a safeguard measure including any extension shall not exceed five years (paragraph 6, MTN.GNG/NG9/W/4).

3. Duration for import relief measures will be a period of not more than two years and may be extended another year by authorization of a special body. In special circumstances it may be extended for a fourth year. The safeguard action as a whole should not continue for more than four years (paragraph 6, MTN.GNG/NG9/W/9).

4. Based on experience, the usual duration provided for import relief measures was in the range of three to five years. The maximum for which

these measures might be extended was another three years. It would be concluded that in the most extreme circumstances, the maximum amount of total relief would be eight years (paragraph 12, MTN.GNG/NG9/6).

5. The Surveillance Body will supervise the period of application, which will be 12 months with the option of extension for a further six months, provided that serious injury has been shown to persist after one year (paragraph 12(b), MTN.GNG/NG9/W/18).

6. There should be 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 subjecting them to regular review mechanisms (paragraph 13, MTN.GNG/NG9/W/16).

7. All extension of safeguard actions had to be reviewed or analysed by a GATT committee but the power of extension should rest with the government concerned (paragraph 12, MTN.GNG/NG9/6).

8. In order to encourage the use of measures on a temporary basis, certain incentives should be provided within the General Agreement. One possibility was to have different provisions to deal with actions with a limited duration and those going beyond a time-limit (paragraph 13, MTN.GNG/NG9/6).

9. To fix a period for the duration of safeguard measures without any modulation was inappropriate. A duration of three years for safeguard measures for some agricultural products would be too long while the same period for steel or some high technology goods might not be long enough (paragraph 18, MTN.GNG/NG9/2).

10. Reintroduction of a safeguard measure shall be prohibited during a certain period of time after termination of the said measure (paragraph 4, MTN.GNG/NG9/W/11).

11. Another time limit which could be applied to safeguard measures was that they could only be invoked within a certain period, for instance five years, following the entry into force of a new concession (paragraph 11, MTN.GNG/NG9/6).

12. It was inappropriate to stipulate that a country could invoke safeguard actions only within a certain period after a concession was made because Article XIX spoke not only of tariff concessions, but of "obligations ... incurred under the General Agreement" which could occur all the time (paragraph 11, MTN.GNG/NG9/6).

#### E. Degressivity

1. Safeguard measures taken for a period longer than 12 months shall be degressive and shall be progressively liberalized during the period of their application. Positive steps to achieve such liberalization shall be taken

at intervals of no more than 12 months. Where the safeguard measures take the form of tariffs, the higher tariff rate should be lowered at intervals of not more than 12 months with a view to returning by equal stages to the level applied before the safeguard measure is taken. Where the safeguard measures take the form of quantitative restrictions, the size of the quota should be increased by a specific minimum percentage at intervals of no more than 12 months (paragraph 5(a), MTN.GNG/NG9/W/4).

2. Degressivity was critical for the purpose of keeping pressure in firms to adjust (paragraph 6, MTN.GNG/NG9/4).

3. 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. Provisions regarding the implementation of degressivity should principally be directed at measures lasting for a longer period of time. For measures not exceeding one year, degressivity requirements would by and large be irrelevant (paragraph 14, MTN.GNG/NG9/W/16).

4. If a measure was extended, then the extended measure should be more liberal in terms of the level of restriction than the measure which was taken before (paragraph 17, MTN.GNG/NG9/6).

#### F. Structural adjustment

1. Starting from the notion that fair exporters should not be punished, the burden of domestic adjustment has to be sustained by the economy of the importing country, particularly those of developed nations. Governmental action to correct negative effects of the operation of market forces should consequently and primarily consist of government assistance to adjustment by domestic producers (paragraph 12, MTN.GNG/NG9/W/5).

2. Structural adjustment is an essential element. It is fundamental to the concept of emergency suspension of GATT obligations as the whole purpose of taking such limited protective action is to provide an opportunity to adjust. There are a variety of approaches to this, ranging from non-interference in the autonomous structural adjustment process on the one hand, to full-scale industry assistance programmes on the other hand. What precisely would be appropriate in any given set of circumstances is difficult to envisage in a set of rules for objective application. It should be expected though that any adjustment measures should be consistent with GATT obligations (on e.g. subsidization). Moreover, it is envisaged that introducing structural adjustment measures should be a condition for any extension of emergency measures, so that it would be a prerequisite of considering an extension that structural adjustment measures should have been introduced during the initial period of the operation of a safeguard measure (paragraph 18, MTN.GNG/NG9/W/8).

3. Structural adjustment should basically be accomplished through market mechanism. The implementation of structural adjustment should not be a prerequisite for the application of safeguard measures (paragraph 6, MTN.GNG/NG9/W/11).

4. The commitments under a safeguards agreement relevant to the facilitation of structural adjustment should be confined to restoring the GATT concession temporarily withdrawn (paragraph 15, MTN.GNG/NG9/W/16).

5. In the first place, it would be appropriate to confirm that structural adjustment is a permanent necessity tied to competition and in the first instance is a matter within the responsibility of the industry concerned. Consequently, government intervention should remain of a subsidiary character and be reserved for cases where an industry's loss of competitiveness results in a substantial increase in imports. The measures in question are designed to support the structural adjustment effort of the producers concerned in order to restore their competitiveness or to progressively dismantle a production activity with a view to closing it down. In the event that a government finds itself obliged to intervene to support an industry's structural adjustment efforts, it should have the choice between internal measures (e.g. investment credits or equivalent measures) and measures at the frontier (paragraph II.4, MTN.GNG/NG9/W/20).

6. In order to prevent any misuse, i.e. a situation where an internal measure presented as a safeguard might be used to conceal a subsidy, payments out of public funds should be reimbursable (paragraph II.4, MTN.GNG/NG9/W/20).

7. 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 (paragraph 5, MTN.GNG/NG9/7/Add.1).

8. 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 (paragraph 5, MTN.GNG/NG9/7/Add.1).

9. Very often, these structural adjustment programmes create new problems and distortions. They are expensive and difficult to administer. Subsidies tend to become permanent fixtures as a result of political and social pressure (paragraph 6, MTN.GNG/NG9/7/Add.1).

10. The ultimate goal of the Group was to draw up a comprehensive agreement on safeguards, which 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. 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. A disincentive was created by the fact that certain contracting parties applied to them countervailing duty legislation (paragraph 7, MTN.GNG/NG9/7/Add.1).

#### G. Compensation and retaliation

1. Where an affected contracting party intends to take action under paragraph 3(a) of Article XIX, the parties involved should endeavour to agree to the provision of equitable compensation on a non-discriminatory basis by the contracting party maintaining the Article XIX measures, rather than the suspension of substantially equivalent concessions by the affected contracting party. This does not, however, prejudice the right of a contracting party to take retaliatory action in accordance with paragraph 3(a) of Article XIX (paragraph 7(a), MTN.GNG/NG9/W/4).

2. A contracting party introducing import relief measure shall provide compensation. Compensation should be agreed upon among interested contracting parties. If no agreement is reached, the matter should be taken to the "special body" to make a decision in this regard. While an import relief measure is continuing and no decision has been made by the "special body", an affected contracting party may take retaliatory measures equivalent to the safeguard measure affecting its exports (paragraph 9, 10, MTN.GNG/NG9/W/9).

3. The right to take retaliatory action as well as to request for compensation, as provided for in Article XIX or conducted as practice, should be maintained with a view to preventing the abuse of and to ensuring deterrence against safeguard measures (paragraph 7, MTN.GNG/NG9/W/11).

4. Once it is ensured that the safeguard measures is temporary, the question of compensation and the provision for retaliation become less important. Retaliatory withdrawal or compensatory offer may give Article XIX actions 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 (paragraph 9, MTN.GNG/NG9/W/15).

5. 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 consideration had led to a host of VERs and similar arrangements. That was why one possible means of restoring the m.f.n. principles and other disciplines was to relieve the compensation and retaliation requirements (paragraph 8, MTN.GNG/NG9/7/Add.1).
6. 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 (paragraph 9, MTN.GNG/NG9/7/Add.1).
7. 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 (paragraph 9, MTN.GNG/NG9/7/Add.1).
8. Safeguard measures aimed at overcoming structural difficulties should not necessarily be subject to any counter-measures such as compensation or retaliation. It would nevertheless be most desirable that sanctions may be taken, in certain well-defined conditions and in particular in the event of non-compliance with the agreed safeguard regime. To be effective, such sanctions should consist of collective action whose automatic conditions and modalities would be part of the regime to be established (paragraph 8, MTN.GNG/NG9/W/10).
9. The CONTRACTING PARTIES will determine whether the measures taken are being applied in accordance with the established rules. Any infringement should be liable to unconditional collective sanctions which may consist of a temporary increase in customs duties on imports from the country responsible for such infringement (paragraph II.4, MTN.GNG/NG9/W/20).
10. The following considerations 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? (Paragraph 10, NG9/7/Add.1).

H. Transparency, notification and consultation

1. All measures taken under Article XIX shall be notified in accordance with paragraph 2 thereof. Any such notification shall contain all relevant information including the precise description of the product subject to the measure, the type of measure, the reason for the measure including the evidence of serious injury or threat thereof to the domestic producers, the proposed date of implementation, the expected duration and timetable for phase-out of measures, and the steps taken to prevent or to be taken to remedy the need for the measure (paragraph 3(a), MTN.GNG/NG9/W/4).
2. All other existing protective measures not based on the GATT shall also be notified to the CONTRACTING PARTIES through the Surveillance Body on Safeguards (paragraph 3(b), MTN.GNG/NG9/W/4).
3. Prior to any safeguard measures or any extension thereof being taken, the consultation procedures set out in paragraph 2 of Article XIX shall be strictly observed (paragraph 8(a), MTN.GNG/NG9/W/4).
4. In a situation of "critical circumstances" where a contracting party may take safeguard action under paragraph 2 of Article XIX provisionally without prior consultation with those contracting parties having substantial interest as exporters of the product concerned, the period of provisional application of any such measure shall be limited to three months, within which period the relevant requirements of notification and the establishment of serious injury or threat thereof must be met (paragraph 8(b), MTN.GNG/NG9/W/4).
5. It is necessary to secure transparency of all safeguard measures of each contracting party including relevant national legislation and procedures (paragraph 1, MTN.GNG/NG9/W/11).
6. Transparent procedures of investigation to determine the existence of serious injury was the most effective guarantee of uniform and equitable practices (paragraph 19, MTN.GNG/NG9/5).
7. Transparency on its own was not a guarantee but had to be accompanied by a set of multilaterally agreed rules (paragraph 19, MTN.GNG/NG9/5).
8. 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 (paragraph 11, MTN.GNG/NG9/7/Add.1).



9. 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. 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 (paragraph 11, MTN.GNG/NG9/7/Add.1).

10. 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 the Article XIX 3(a) entail? Should any "agreement" be subject to review? Should any attempt be made to define "critical circumstance"? (Paragraph 12, MTN.GNG/NG9/7/Add.1).

I. Multilateral surveillance and dispute settlement

1. A special surveillance body would be established in GATT to monitor the application of domestic adjustment assistance measures and import relief measures taken under the Protocol of Provisional Application and eventually of the Revised Article XIX. This body would also monitor the termination or continuation of safeguard actions (paragraph 14, MTN.GNG/NG9/W/3).

2. A Surveillance Body on Safeguards open to all contracting parties shall be established as a standing body:

- (a) to monitor the implementation of the safeguards agreement;
- (b) to review, at least once a year, all the safeguard measures notified to the CONTRACTING PARTIES and make recommendations, as appropriate. It shall submit its findings to the CONTRACTING PARTIES;
- (c) to monitor the phase-out of protective measures not based on the GATT but having a safeguard effect;
- (d) to review promptly at the request of any contracting party any particular safeguard measure. It shall make recommendations as appropriate to the contracting party or parties concerned;
- (e) Contracting parties shall do their utmost to accept in full the recommendations of the Surveillance Body on Safeguards. Where they consider themselves unable to follow any such recommendations, they shall forthwith inform the Surveillance Body on Safeguards of the reasons therefor and of the extent to which they are able to follow the recommendations;

- (f) If, following recommendations by the Surveillance Body on Safeguards, problems continue to exist between the parties, these may be brought before the CONTRACTING PARTIES through the normal GATT procedures (paragraph 9, MTN.GNG/NG9/W/4).
3. Surveillance should be conducted periodically or upon requests of the parties concerned. To this end, the existing Safeguards Committee should be reformed and reinforced (paragraph 9, MTN.GNG/NG9/W/11).
4. The determination of serious injury or threat thereof and the decision to take appropriate safeguard actions should rest with importing countries and it was not appropriate to authorize such powers to an international body (paragraph 20, MTN.GNG/NG9/5).
5. While the rôle and responsibility of this Committee should be fairly specific in terms of contracting parties' requirements to notify, consult and review, the dispute settlement provisions in Article XXIII should not be affected (paragraph 26, MTN.GNG/NG9/W/16).
6. A sub-committee in charge of dispute settlement should be established under the Safeguards Committee. Dispute settlement should be basically sought in this sub-committee, which, however, shall not prejudice the rights of contracting parties to seek solution under Articles XXII and XXIII (paragraph 9, MTN.GNG/NG9/W/11).

J. Special and differential treatment to developing countries

1. The principle of special and differential treatment to developing countries, as mentioned in Section B of the Ministerial Declaration, should be applied to the area of safeguards. This could be achieved by exempting the application of safeguard actions on the exports of developing countries and by strengthening the element of compensation as there was a lack of retaliatory power by developing countries (paragraph 7, MTN.GNG/NG9/1).
2. Less developed contracting parties would be allowed to apply import relief measures for longer periods of time (paragraph 11, MTN.GNG/NG9/W/3).
3. In cases where an affected contracting party intends to take action under paragraph 3(a) of Article XIX and the party is a less developed country, the special situation of the country should be duly taken into account, and if the parties involved fail to reach an agreement, the Surveillance Body on Safeguards will make an appropriate recommendation on compensation (paragraph 7(b), MTN.GNG/NG9/W/4).
4. As a general rule, safeguard action should not be applied by developed countries to imports from developing countries especially those who are new entrants and small suppliers (paragraph 2, MTN.GNG/NG9/W/9).

5. In the negotiation of a comprehensive safeguards agreement, the interest of exporting countries should be fully taken into consideration, namely their stage of development, the importance of the products in question to their economy, trade balance and balance of payments. Special attention should be made to the special and more favourable treatment of developing countries, including the actual export benefits already acquired by the developing countries from the GSP schemes (page 2, MTN.GNG/NG9/W/14).

6. Safeguard actions should not be taken against small suppliers from developing countries whose market shares were less than an agreed minimum of the import market in the specific product (paragraph 12, MTN.GNG/NG9/5).

7. Special and differential treatment in this regard (paragraph 1 above) would amount to selectivity the other way round and would lead to an imbalance of rights and obligations (paragraph 7, MTN.GNG/NG9/1).

K. "Grey-area" measures

1. "Grey-area" measures were inconsistent with the basic GATT principles and thus could not be the subject for negotiations (paragraph 5, MTN.GNG/NG9/1).

2. Existing "grey-area" measures should be phased out in accordance with the rollback commitment and new measures should be prohibited as they would run counter to the standstill commitment (paragraph 5, MTN.GNG/NG9/1).

3. Contracting parties agreed that existing protective measures not based on the GATT, which include voluntary export restraints, orderly marketing arrangements, industry-to-industry arrangements, and administrative arrangements maintained by governments including on an intergovernmental basis which have a safeguard effect, are trade restrictive measures prescribed under paragraph 1 of Article XIX, and that unless they are justified under the conditional exemptions in the General Agreement, they shall either be brought into conformity with the provisions of Article XIX or be eliminated (paragraph 3(b), MTN.GNG/NG9/W/4).

4. There is no room for compromise with those who would urge that the GATT be realigned to conform with the reality and practice of the "grey-area" (paragraph 25, MTN.GNG/NG9/W/8).

5. Even if "grey-area" measures were economically beneficial to exporters, these benefits were only short-term. There was no dispute that such measures were contrary to the objective of trade liberalization because they were an obstacle to structural change and adversely affected third countries (paragraph 8, MTN.GNG/NG9/3/Add.1).

6. "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 (paragraph 1(e), MTN.GNG/NG9/W/18).

7. "Grey-area" measures normally involve 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 (paragraph 22, MTN.GNG/NG9/W/16).

8. The solution to the problem of "grey-area" measures was not simply to outlaw such measures which were taken for a variety of reasons. Their origin could derive from an Article XIX situation or an Article VI situation. Their existence represented facts of life and not all of them should be condemned (paragraph 22, MTN.GNG/NG9/2).

9. Trying to get rid of "grey-area" measures without considering the broader problem of structural adjustment and the political readiness of governments for economic change was too simplistic an approach (paragraph 8, MTN.GNG/NG9/3/Add.1).

10. Sovereign governments had to be convinced that a solution acceptable to all was possible. For them an acceptable solution on safeguards would have adequately to address the existing imbalance of rights and obligations and would have to contain effective mechanisms to prevent the circumvention of the final results, so that they would feel that there was no need for "grey-area" measures any more (paragraph 8, MTN.GNG/NG9/3/Add.1).

11. We must continue to examine why this ("grey-area" measures) is happening, consider how best to reverse the process, ask ourselves whether the multilateral trading system is better served by bringing these measures under GATT rules and, if so, consider how and under what conditions (page 2, MTN.GNG/NG9/W/12).

#### L. Legal framework

1. The most appropriate legal framework for an agreement on safeguards would be in the form of a protocol modifying or complementing the provisions of Article XIX (paragraph 9, MTN.GNG/NG9/1).

2. The agreement should be applied to all contracting parties. A MTN-type code would therefore not be sufficient for this purpose (paragraph 9, MTN.GNG/NG9/1).
3. The terms of an agreement on safeguards should be incorporated into national legislation (paragraph 9, MTN.GNG/NG9/1).
4. The Comprehensive Understanding on Safeguards should take the form of an amendment to Article XIX of the General Agreement. Pending the completion of the requirements for the entering into force of the Amendment, the Understanding would become immediately operative through the adoption of a Protocol of Provisional Application (paragraph 1, MTN.GNG/NG9/W/3).
5. Among the alternatives of (a) amendment to GATT, (b) adoption of a code, or (c) adoption of a understanding by consensus, the only way by which adherence to the understanding by all contracting parties can be ensured is the third alternative (paragraph 11, MTN.GNG/NG9/W/15).
6. New provisions in respect of "other measures concerning particular products" should be elaborated so as specifically to cover the case of structural difficulties (paragraph II.4, MTN.GNG/NG9/W/20).