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THE URUGUAY ROUND**

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**Group of Negotiations on Goods (GATT)**  
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The attached paper is being circulated to members of the Group at the request of the delegation of the United States.

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## ELEMENTS OF A SAFEGUARDS AGREEMENT

In document GNG/NG9/W/12, the United States stated that the fundamental challenge of the safeguards negotiation was 1) to provide clearly-elaborated rules and disciplines governing safeguards measures, while 2) making the GATT safeguard provision sufficiently dynamic and credible so that nations will act under it, rather than outside of it. The United States continues to believe that each of principles must be satisfactorily addressed in order to conclude a meaningful, comprehensive safeguards agreement. The absence of an effective safeguard mechanism or the adoption of excessive disciplines established under a safeguards agreement will encourage countries to continue resorting to measures taken outside GATT disciplines.

The Negotiating Group is now at the point where it will begin considering a draft text of a safeguards agreement. The United States has not made a final decision on how the above principles can best be achieved, especially with respect to the question of country coverage. Nevertheless, we offer the following views on all elements of a safeguards agreement. Several provisions of this paper reflect written and oral comments made previously by the U.S. delegation in the Negotiating Group. Where our thinking has crystallized we offer specific suggestions in this paper. In those instances where our internal deliberations continue, options are offered or questions are raised. Finally, at the conclusion of the paper, we pose certain questions for the Negotiating Group to consider.

These thoughts are offered without prejudice to the ultimate position of the United States in this negotiating group and they are not necessarily intended to represent precise language to be used as the text of a safeguards agreement.

1. Definition:

Safeguard measures are trade restrictions designed to prevent or remedy serious injury to domestic producers caused by increased imports and to facilitate adjustment. Measures taken for the above purpose or having such effect not provided for under other GATT Articles, Agreements or Arrangements shall be subject to the provisions of this Agreement. Safeguard measures inconsistent with the terms of this Agreement shall be promptly phased out or brought into conformity with this Agreement.

## 2. Objective Criteria:

a. If any product is being imported into the territory of a Contracting Party in such increased quantities (in actual terms or relative to domestic production) and under such conditions as to cause or threaten to cause serious injury to the domestic industry in that territory producing like or directly competitive products, the Contracting Party shall be permitted to take a safeguard action. This requires a determination by an independent body in the importing country that:

- imports have increased (in actual terms or relative to domestic production);
- serious injury or threat thereof is occurring; and
- there exists a causal link between the increased imports and the serious injury or threat thereof.

b. The determination of serious injury or threat thereof shall be based inter alia on an examination of:

- actual or potential output
- turnover/sales
- profits
- capacity utilization
- employment
- wages
- inventories
- prices
- return on investment
- market share
- ability to raise capital for R&D and modernization

No one of these factors, nor even several taken together, may necessarily be decisive in the determination of serious injury.

c. A "threat" of serious injury is defined as existing when serious injury, although not yet occurring, is clearly imminent if present trends continue.

## 3. Remedy:

The restrictive effect of a safeguard action should not exceed that necessary to prevent or remedy the serious injury. Safeguard measures should be designed to facilitate adjustment and should normally take the form of increased tariffs, but may take the form of quantitative restrictions or other trade

measures which prevent or remedy injury and facilitate adjustment.

No tariff increase should be more than 50 percent ad valorem above the rate (if any) existing prior to imposition of the safeguard measure. Any quantitative restriction should reflect imports over the most recent representative period.

4. Coverage:

Safeguard measures should be applied only to imports of products found to cause or threaten to cause serious injury.

In document GNG/NG9/W/12, the U.S. offered five options regarding country coverage. After careful consideration, we believe further discussion can best move forward if the negotiating group focuses on the following three options, drawn in part from discussions that have occurred to date.

- A. Safeguard measures are authorized only on an MFN basis. The MFN principle would remain the only permissible basis for taking a safeguard action. Non-MFN measures shall be promptly phased-out or brought into conformity with the terms of this agreement.

This option would proscribe the use of selective measures. This approach would recognize, however, that countries may nevertheless take grey area measures and establish a mechanism for addressing them. Procedures would be established for notifying or cross-notifying the existence of any such measures, with a set of guidelines for their elimination.

This option would provide discipline on national decision-makers, who may otherwise be forced by domestic political pressures to seek the most expeditious, flexible solution to import problems, despite the recognized adverse effect of such measures on the trading system.

- B. Safeguard measures should generally be applied on an MFN basis. In exceptional circumstances, selective safeguard measures may be applied on a mutually agreed basis. Incentives should be established to encourage application of safeguard measures on an MFN basis, with disincentives on the use of selective measures. If the country taking the safeguard measure is unable to reach agreement with the exporting countries concerned, the safeguard action may only be taken on an MFN basis. The interests of affected third

parties must be taken into account and consultations must be afforded to such countries as requested.

In addition to meeting the other elements of the safeguards agreement, this option would provide two sets of disciplines: one for MFN measures, a second, more rigorous set for selective measures applied on a mutually-agreed basis.

Examples of incentives/disincentives might be as follows:

MFN measures:

- Maximum total duration as provided in paragraph 5(a);
- Degressivity required "as feasible" for measures exceeding three years;
- Compensation/retaliation requirement possibly reduced.

Selective Measures:

- Shorter duration (e.g. five years);
- Mandatory degressivity after the first year of relief;
- No reduction of retaliation/compensation requirement.

This option would provide alternatives to facilitate adjustment for an affected industry, with incentives designed to encourage MFN actions. Such procedures would provide a disciplined alternative to measures currently taken outside GATT rules.

- C. Safeguard measures may be applied on an MFN or on a selective basis if the importing and exporting countries agree. All such measures must be subjected to GATT disciplines, albeit the same disciplines.

Countries would be free to choose between MFN and mutually-agreed selective measures, provided that the measure was consistent with all other safeguard disciplines (e.g., serious injury, transparency, etc.). As with option B, failure to achieve agreement between the importing and exporting country would require that the safeguard action be taken on an MFN basis.

Since this option would provide contracting parties the greatest flexibility in taking a GATT-consistent safeguard measure, one would expect that it would be least likely that measures would continue to be taken outside of the agreement.

5. Duration and Extension:

a. A safeguard measure shall not exceed the duration necessary to prevent or remedy serious injury and facilitate adjustment. Nevertheless, in no case may a safeguard measure exceed 8 years. (In the case of the selective approach presented in option B of paragraph 5, the total maximum duration is limited to 5 years.) If the initial effective period of relief is less than 8 years, it may be extended once, but the aggregate of the initial period and the extension may not exceed 8 years. Any country seeking to take a measure of longer duration would need to utilize the provisions of Article XXVIII.

b. Any extension provided within this period may occur only after the government maintaining the measure 1) conducts a comprehensive review of the original determination of serious injury to the domestic industry, taking account of the factors listed in paragraph 2 above and 2) determines that adjustment is underway. This review must indicate that serious injury or threat thereof continues to exist or would recur if the measure were to lapse.

c. The government seeking to extend the safeguard measure shall notify its intentions to do so and provide justification to the Safeguards Committee regarding its decision, providing the results of the above described review with all supporting non-confidential data. This government shall also afford affected contracting parties the opportunity to consult.

6. Adjustment and Degressivity

Adjustment should be primarily determined by market forces. To encourage adjustment, safeguard measures should be of limited duration and be degressive (i.e., gradually liberalized) in accordance with a schedule, notified at the time of implementation. The nature of any requirement for degressivity shall be affected by the provisions of paragraph 4 (coverage) above. Any such adjustment measures, or measures taken by governments to facilitate adjustment, shall be consistent with GATT obligations (on e.g., subsidies).

7. New Measures:

After a safeguard measure and any permissible extension have been provided, safeguard measures on the affected product may not again be introduced for a period equal to at minimum the number of years for which the original measure and any extension was in effect.

8. Compensation/Retaliation:

The provisions of Article XIX, paragraph 3, shall continue to apply, except with respect to MFN actions taken under Option B, where new rules would need to be developed. Compensation/retaliation rights and obligations should take into account trade liberalization by exporting countries in the GATT.

9. Transparency/Notification/Consultation:

a. All measures taken under this agreement shall be notified in accordance with the procedures expressed in paragraph 2 of Article XIX. Notification and opportunity to consult shall be given 1) at the initiation of the investigatory or deliberative process to determine whether a safeguard action is to be imposed; 2) when the investigatory or deliberative process is concluded but before the decision is made; and 3) when the decision to impose the safeguard measure is actually made. In the third notification, relevant information should be provided, including a precise description of the product subject to the measure, the type of measure, the reasons for the measure including information regarding serious injury or threat thereof to the domestic producers, likely efforts at structural adjustment, the proposed date of implementation, and the expected duration and timetable for phase-out of measures (including degressivity).

b. The provisions of Article XIX, paragraph 2, regarding critical circumstances apply, including its application to perishable agriculture products. The period of provisional application of any such measure shall be limited to seven months within which period the relevant requirements of paragraphs 2 and 9(a) must be met.

c. All existing safeguard measures should be notified to the Safeguards Committee described in paragraph 11. Measures not in conformity with this agreement should either be brought into conformity with the agreement or be promptly phased-out.

d. A contracting party that considers an action taken by another party to be a safeguard measure which has not been notified by that party to the Safeguards Committee, may notify this Committee of the action and request consultations with the party taking the action. The party taking the measure so notified should agree to consult, both bilaterally and in the Safeguards Committee, and the Safeguards Committee may make recommendations as appropriate. Other parties may request consultations under this paragraph when they believe that such measures have caused trade diversion or

otherwise affect their trade interests. Unresolved problems may be referred to GATT dispute settlement procedures.

#### 10. Dispute Settlement

Contracting parties which believe their rights under this agreement are being nullified or impaired have recourse to the dispute settlement provisions of the General Agreement.

#### 11. Multilateral Surveillance:

A Safeguards Committee shall be established and be open to all contracting parties. Its purpose shall be to:

- monitor the implementation of this agreement and make recommendations for further improvements in the agreement;
- review all safeguard measures notified to the Committee and issue reports and make recommendations as necessary including with regard to the conformity of such measures to the safeguards agreement;
- facilitate consultations between parties as appropriate; and
- monitor the phase-out of safeguard measures not consistent with this Agreement.

#### 12. Non-Governmental Measures:

Parties shall not promote or encourage non-governmental agreements which restrain export or import competition for safeguard purposes or which have safeguard-like effects. Parties shall also undertake best efforts to deter public and private enterprises from pursuing and entering into such agreements. Parties shall notify the safeguards committee of any non-governmental safeguard measures of which they are aware.

Nothing in this agreement shall be construed to limit the application or enforcement of the parties' respective anti-trust laws.

#### Questions for Further Consideration

There are several questions which, in the view of the U.S. delegation, need further consideration before a meaningful, comprehensive safeguards agreement can be developed which will serve the international trading system into the next century. These questions include:



- If modalities are developed that would permit the eventual integration of the textiles and clothing sector into GATT on the basis of strengthened GATT rules and disciplines, how should safeguards apply to this sector?
- Normally safeguard measures are intended for situations where an industry in one country needs to adjust to changed competitive conditions. There have been circumstances, however, perhaps like those prevailing in steel over the past decade, where problems have been more global in nature. Should there be special rules for such situations?