

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Revision

The following paper is being circulated to members of the Group at the request of the delegation of the European Communities.

I. INTRODUCTION

For the Community, the conclusion of an agreement on safeguards is a question of fundamental importance, vital to the success of the Uruguay Round. As an essential component in the process of trade liberalization, safeguard disciplines have a decisive impact on the establishment of a secure framework for the implementation of commitments on market liberalization. Conversely, safeguard disciplines cannot operate effectively unless participants are willing to commit themselves to trade liberalization compatible with their level of development.

The present GATT safeguards system has been undermined as a result of the fact that the constraints imposed by Article XIX have only really been felt by a limited number of countries. Differing degrees of tariff bindings and the broad scope for recourse to non-tariff measures under certain exceptions to the General Agreement, represent an obvious imbalance in this respect. Moreover, some contracting parties have introduced instruments in their domestic legislation which allow unilateral measures to be taken in direct contradiction with the multilateralism of GATT disciplines. For this reason, the Community could only accept reinforced multilateral control over all forms of safeguard measures if the type of situations described above are also subject to reinforced multilateral disciplines as a result of the work in other negotiating groups.

The re-establishment of multilateral control over safeguards was the objective stressed by Ministers during the Mid-Term Review. The proliferation of measures outside GATT disciplines weakens the multilateral trading system by emphasizing unilateral and bilateral approaches to trade problems. At the same time, it must be recognized that the countries which have resorted to such measures have done so in response to situations which could not be dealt with satisfactorily on the basis of existing GATT rules. For this reason, trying to eliminate these measures simply by declaring them illegal would be neither credible nor effective, since it would ignore

* English only/anglais seulement/inglés solamente

the complex range of factors which lie behind them. In the Community's opinion, the only realistic way of achieving the aim of the Negotiating Group is to draw up a new set of rules offering to both importers and exporters enough good reasons to apply GATT rules when they need to take safeguard measures. It will only be on the basis of such a set of rules and the progress achieved in all the other negotiating groups that a decision could be taken on the modalities to ensure that GATT exercises effective control over all forms of safeguard action.

The ideas here presented on safeguards take account of the process of progressive integration of the textiles sector into GATT. At the end of this process of integration, the general rules defined in safeguard negotiations will be applicable in the textiles sector. It is essential, however, to ensure that during the period in which such progressive integration is achieved, problems that arise in the textiles sector are dealt with through specific provisions that take into account the particular conditions characterizing trade in textiles. In this sense specific safeguard rules which apply to textiles during the process of integration are of fundamental importance.

In this initial contribution the Community proposes to look at the problem of safeguards from a new angle, notably by introducing a distinction between implementation modalities according to the length of time for which protection is needed to absorb injury. Therefore "Track I" (see section III.1), covers safeguard measures in cases of difficulties which can reasonably be resolved within a relatively short period of time. "Track II" (see section III.2), on the other hand, presents options for safeguard measures which would generally be applied over a longer period of time. These proposals could be further developed in the course of the negotiations.

II. GENERAL SAFEGUARD DISCIPLINES

1. Conditions and guarantees

Application of a safeguard measure should be subject to the following conditions:

(a) Existence or threat of serious injury:

Recourse to safeguard measures is only justified if the importing country is faced by a situation of serious injury or the threat of such injury.

Accordingly, the condition sine qua non for the introduction of any kind of safeguard action must be the existence (or threat) of clearly established injury, as well as the causal link between the increase in imports (in absolute or relative terms) and the injury suffered by domestic producers.

The enumeration of a list of factors to be taken into consideration in determining injury would ensure greater objectivity in the adoption of safeguard measures. Furthermore, minimum procedural guidelines for internal investigations could be introduced.

(b) Time-limits and degressivity

To the extent that all safeguard measures are by definition of limited duration, a time-limit for the restrictions should be announced when they are introduced. A degressive mechanism should be provided for. In any event, the party taking the measure should, at a stage to be determined, review the situation to determine whether early withdrawal of the measure or greater degressivity could be envisaged.

Moreover, it should be agreed that after the expiry of a safeguard measure, the renewal of an action of the same type would not be allowed for the same product within a reasonable period of time.

(c) Conditions for the application of countermeasures

In current GATT practice, measures consistent with the criteria of Article XIX are subject to the threat of retaliation in the same way as those which are not.

The absence of any distinction between measures which are or are not consistent has seriously compromised the very basis of Article XIX:3. In our view, collective responsibility in the real sense of the term should mean that the importing country must limit safeguard measures to a set of multilaterally agreed disciplines (by elaboration of the Article XIX criteria) and that the exporting country accepts temporary limitations to its right to take countermeasures.

The Community therefore proposes that a safeguard measure which is consistent with the agreed criteria would not be liable to the countermeasures provided for in Article XIX:3.

An exemption of this kind should, of course, be accompanied by a reinforcement of the criteria for the application of Article XIX (i.e. the injury test and time-limits) described above. Additional guarantees would result from multilateral control provisions and criteria relating to the types of restriction which could be applied on the basis of Article XIX (see respectively paragraph (d) and section 2 below).

It should be understood, however, that countermeasures appropriate to the injury suffered could be taken by the affected exporting country, in order to strengthen the relevant multilateral disciplines:

- if a dispute settlement procedure establishes that a safeguard measure does not conform to the agreed criteria;
- as soon as the maximum time-limit for the application of the safeguard measure expires.

(d) Multilateral surveillance committee for safeguard measures

The Community proposes the establishment of a Committee with competence over all safeguard measures. It would have responsibility for the following:

- (i) Notification: transparency should be guaranteed by establishing an effective notification/counter-notification system.
- (ii) Consultation: the aim of consultations would be to discuss on the particular modalities for the application of the measure in question. In principle, the consultations should be held before the safeguard measure is implemented; however, in critical circumstances where any delay would cause injury difficult to remedy, they could be held immediately after such implementation. The Committee should also carry out a regular examination of all notified safeguard actions.
- (iii) Dispute settlement: if a country considers, after consultations, that a safeguard does not conform to the agreed criteria, it should be able to enter into a dispute settlement procedure. Given that settlement of a safeguard case is particularly urgent, and bearing in mind that the system should be able to operate on the basis of mutual trust because of the limitation of retaliation, a rapid settlement procedure should be established.

2. Types of safeguard and modalities of application

Since the injury criterion is at the heart of Article XIX, the restrictive effect of the instruments which could be permitted as safeguards should be limited to that which is necessary and sufficient to avoid or remedy the injury. On condition that this principle is respected, two types of action should be envisaged.

(a) Tariffs

A temporary increase in duties may well be a particularly adequate instrument to facilitate the adaptation of domestic producers to changed conditions of competition. The tariff has the advantage of transparency, and degressivity can be simply applied through a staged restoration of the prior concession. Tariffs are particularly useful in the case of longer-term measures.

Criteria could be developed in order to ensure that tariff action does not exceed the restrictive effect needed to remedy injury.

(b) Quantitative restrictions

(i) Implications of the injury principle

In order to conform to the injury principle referred to above, QRs should not reduce imports to below the level of a representative earlier reference period. Moreover, traditional trade flows should be maintained as far as possible.

In accordance with normal GATT practice, the reference period should consist of the average of the three years preceding the opening of an investigation into injury. There should, however, be exceptions to this provision in cases where this average would not remedy injury.

For the same reasons, the reference period could constitute an equitable basis for allocating the shares of different suppliers. However, to be fair, the allocation of shares and the fixing of growth rates should take into account the extent to which the pattern of imports has contributed to overall injury, so that quotas could be modulated when necessary to keep imports from certain sources within the limits set by the need to absorb injury.

(ii) Degressivity

Quotas should be able to be gradually increased, in accordance with formulae to be agreed, to ensure that the safeguards are degressive. It goes without saying that for contracting markets degressivity will be established on the basis of the ratio of imports to consumption.

III. THE TWO TYPES OF SITUATION REQUIRING SAFEGUARD ACTION

The Community proposes a distinction between situations requiring safeguard action according to the length of protection needed to absorb injury.

1. Track I: short-term safeguards

This type of situation, which fits into the traditional GATT concept of safeguards, covers cases in which injury can be absorbed:

- by the application of border measures alone;
- within a fairly short-time period, not exceeding for instance three years.

2. Track II: longer-term safeguards

(a) Structural adjustment

In some cases the normal time limit for application of safeguards and the use of border measures alone could be insufficient.

At this stage, it is not possible to give an exhaustive description of this type of situation.

The following situations could be involved:

- a structural crisis where it is clear from the start that competitiveness cannot be re-established within the time limits of the normal provisions;
- cases where the importing country has applied safeguards but has not been able to absorb the injury within the initial time limit, and provided the conditions attached to Track II are fulfilled.

In such circumstances, safeguards should be accompanied by an adjustment process. It matters little whether the adjustment measures are taken by industry or are encouraged by the public authorities. Given the diversity of the economic systems of GATT contracting parties, it would not be appropriate to try to impose a particular type of adjustment measure. The decision as to whether measures are taken by public authorities or private industry, and the choice from among the different adjustment measures available should be for the party which wishes to apply Track II safeguards.

The Community would like to propose that a country that is introducing such adjustment measures should be able to apply safeguards for a longer period, to be fixed. This increase in the period of protection is justified by the fact that adjustment measures are not only of obvious domestic benefit, but are also of value externally, because they treat the root cause of problems which can be described, using a medical image, as local trade "inflammations". Until now, contracting parties have been able to maintain protective measures as temporary safeguards for decades in full conformity with Article XIX, without introducing any adjustment measures. To extend the metaphor they have been able, in fact, to do nothing more than take care of the symptoms, allowing the illness to become chronic.

(b) Additional guarantees for Track II

An agreement on safeguards allowing measures for a longer period of time should, however, be delimited by legal provisions which offer real guarantees against abuse to exporting countries who see their market opportunities reduced.

The conditions and guarantees outlined above for safeguards in general would of course apply in full to Track II measures (for example, injury, temporary and degressive character, etc.). In order to meet all concerns it is nevertheless necessary to develop further guarantees, which should relate to the definition of situations where Track II safeguards could be used.

For those cases in which a Track II safeguard action is taken, following a Track I action, it would be equitable to provide that all or part of the prior period of protection be subtracted from the maximum duration.

Provisions on multilateral surveillance would also have a real moderating effect. An important rôle should be attributed to consultations with affected exporting countries. Moreover, information about the implementation of adjustment measures should be supplied regularly to the Safeguards Committee. The implementation of adjustment measures would be a condition for the non-application of countermeasures by the exporting countries.

IV. OTHER SITUATIONS

While the proposed Track I and Track II disciplines appear adequate for most safeguard cases which might arise, it would be unrealistic at this stage not to examine other options.

Some circumstances might require a solution which, though selective, would nevertheless be accompanied by adequate guarantees for the exporting countries. An example of this would be if a sudden increase in imports from a very limited number of suppliers was on its own sufficient to cause serious injury. In such circumstances, it would be in the interest of both the importing country and the exporting countries to agree on a specific remedy designed especially for the particular situation.

It is clear, however, that such an option should be subject to stricter disciplines in order to prevent abuse. By way of example, such disciplines could concern elements such as: a shorter period of application, stricter multilateral surveillance, contractual nature of the measure.