

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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SAFEGUARDS AND SERVICES

Note by the Secretariat

I. Introduction

1. The purpose of this note is to summarize the principal points which have been made with respect to safeguard concepts and provisions in the GNS, and to identify a number of issues that might be addressed by participants. The note responds to a request made in the meeting of the GNS of 17-21 July 1989. A ground-clearing exercise was suggested, building on whatever had been said and done in earlier meetings of the GNS and posing questions and raising issues which would help delegations in preparing themselves for the meeting where the concept of safeguard actions would be discussed (see MTN.GNS/24 paragraph 26C).

2. This background note is structured as follows. After briefly discussing what the possible grounds for safeguard action may be, there is an overview of how safeguard concepts and provisions have been dealt with in the GATT and other agreements relating to trade. This is followed by a summary of statements made in the GNS with respect to this issue. Building on this summary, and taking into account the various implications of the distinguishing characteristics of most services - especially their intangibility, non-storability and linkages with other sectors of the economy - the discussion turns to the feasibility of applying existing GATT safeguard concepts and provisions to trade in services. After discussing what could be considered to be the possible grounds for services-related safeguard provisions, the note turns to the considerations which could be taken into account in the determination of injury and the nature of the remedy. What emerges from the discussion is that the concept of safeguard actions in the context of services may be less straightforward than is the case for trade in goods. In particular, greater problems arise with respect to what or whom can be understood to be injured. It appears that the interpretation of domestic interests and injury may need to be wider in the context of a multilateral framework agreement on trade in services than is the case in the GATT. The note concludes by posing a number of questions and identifying several issues that might be the subject of discussion in the GNS.

II. Grounds for safeguard provisions

3. In the GATT the term safeguards is often used specifically in connection with Article XIX. In the context of discussions in the GNS, and as noted in the Glossary of Terms (MTN.GNS/W/43/Rev.2), broadly defined the

term safeguards refers to any provision in a multilateral framework agreement on trade in services permitting governments under specified circumstances to temporarily withdraw from their normal obligations under an agreement in order to safeguard certain overriding interests.

4. Existing safeguard provisions in agreements pertaining to trade suggest that such provisions can be separated into two types. The first are those designed to protect certain national interests in the event of the occurrence of a pre-defined set of circumstances and which constitute temporary suspensions of obligations or other undertakings. The second are provisions of a continuing nature which constitute exceptions to the generally accepted rules and principles of a multilateral agreement.

5. The safeguard provisions of a temporary nature could be further divided into those dealing with what may be considered under certain circumstances to be an unfair trading practice (such as subsidizing exports) and those provisions designed for safeguarding interests in circumstances where trade cannot be considered as unfair. Various grounds for safeguard provisions under circumstances of fair trade may exist. These include injury of domestic producers pursuant to the implementation of a commitment to liberalize trade and protection of the national external financial position in the context of balance-of-payments difficulties.

III. Existing safeguard provisions

6. Judging from the discussion in the GNS (see paragraphs 17-20 below) it appears that some governments are of the opinion that to some extent both the safeguard concept and possible provisions may be similar to those embodied in existing agreements pertaining to trade. Examples include the GATT, the Rome Treaty establishing the European Economic Community, the OECD's Code of Liberalization of Current Invisible Operations, the Canada-US Free Trade Agreement, and the Convention establishing the European Free Trade Association.

7. There exist a number of provisions of a safeguard nature in the GATT. Articles of the GATT that allow for the temporary suspension of obligations include the following:

- Article VI focuses on measures to deal with dumping, i.e. the introduction of products of one country into the commerce of another country at less than normal value if this causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. If products are found to be dumped and materially injure a domestic industry, Article VI allows levies to be imposed to offset the difference between normal value and prices charged for the product.

Article VI also allows action to be taken if products that are exported by a country have been found to benefit from subsidies that affect trade and materially injure domestic industries. In

such cases, Article VI allows levies to be imposed to offset the effect of the subsidization;

- Articles XII and XVIII:B, which permit restrictions on imports to be imposed to safeguard a country's external financial position and its balance of payments. There exist criteria that need to be satisfied, i.e. a serious decline in monetary reserves (or the threat thereof), or a very low level of monetary reserves;
- Article XVIII:A and XVIII:C, which deal with governmental assistance to economic development, and allows measures affecting imports to permit the attainment of the progressive development of the economies of contracting parties which can only support a low standard of living and are in the early stages of development; and
- Article XIX, which allows the suspension of obligations or the withdrawal or modification of concessions if as a result of the obligations or concessions incurred under the GATT an unforeseen increase in imports of a product occurs in such quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products;¹

8. All four of these Articles require the existence of injury - current or threatened - to either producers, industries, or the balance-of-payments. However, injury standards vary. For example, Article VI requires material injury, while Article XIX requires serious injury. Article VI focuses on the responses to what is considered to be unfair trade: dumping and subsidization of exports. Actions taken are focused solely on those products benefiting from unfair assistance. There is no requirement to compensate affected exporters or to consult. However, the general dispute settlement procedures of the GATT can be invoked. In contrast to Article VI, Articles XII, XVIII, and XIX may be invoked against imported goods that are traded fairly. Actions need to be non-discriminatory. Under Article XIX there is a need for contracting parties invoking it to consult affected contracting parties. Affected parties have, under certain circumstances, the right to demand compensation or to retaliate.

9. Provisions of the GATT allowing for exceptions of a continuing nature include:

- Article XX, entitled "General Exceptions," which allows measures to be imposed to safeguard public morals, health, laws and natural resources, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same

¹It should be noted that a comprehensive safeguard agreement to cover essentially Article XIX-type situations is currently a matter for negotiation in the context of the Uruguay Round.

conditions prevail, nor may it be a disguised restriction on trade; and

- Article XXI, which allows intervention on national security grounds.

Under both of these Articles there is no requirement to consult, nor are there provisions allowing for retaliation or compensation. Again, however, general dispute settlement procedures may be invoked if considered necessary.

10. In general, bilateral, regional and multilateral agreements pertaining to trade usually have safeguard provisions of some kind. These provisions are often analogous to those of the GATT. For example, Articles 1101 and 1102 of the Canada-US Free Trade Agreement allow an increase in the rate of duty on a good if, as a result of liberalization under the agreement, the absolute quantity of imports increases to such an extent as to constitute a substantial cause of injury to a domestic industry producing a like or directly competitive product. There are, however, no safeguard clauses specific to service industries. This is also the case for the Protocol on Trade in Services to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which only has an Article on exceptions (see MTN.GNS/W/47).

11. The Rome Treaty establishing the European Economic Community also contains a number of safeguard provisions. Examples include the following: Article 36 allows restrictions on imports to safeguard public policy, security or health, or to protect national treasures or commercial property. Articles 108-109 deal with measures to safeguard the balance-of-payments. Article 115 allows the Commission to authorize Member States to take protective measures in cases where implementation of the common commercial policy leads to economic difficulties. Article 226 allows Members to apply for authorization to take protective measures if, during the transitional period after the Treaty entered into force, serious economic difficulties arise for a sector or area which are liable to persist.

12. The Convention establishing the EFTA also includes safeguard provisions. Article 19 provides that "... any Member State may, consistently with its other international obligations, introduce quantitative restrictions on imports for the purpose of safeguarding its balance of payments." (Article 19 only allows exceptions from the obligation of Member States not to impose quantitative restrictions.) The measures should be notified to the EFTA Council, which "shall examine the situation and keep it under review and may at any time, by majority vote, make recommendations ...". Paragraph 1 of Article 20 of the EFTA Convention provides that: "If, in the territory of a Member State, (a) unforeseen and serious difficulties arise or threaten to arise in a particular sector of industry or region, and (b) to remedy the situation the enforcement of measures which derogate from the Convention or from decisions or agreements reached under the Convention is required, that Member State may, if so authorized by prior decision of the Council, temporarily apply such measures in accordance with terms and conditions which the Council may include in its decision." Paragraph 2 of

Article 20 says that "such measures shall be applied for a period of not more than eighteen months unless the Council decides on an extension".

13. Article 7 of the OECD's Code of Liberalization of Current Invisible Operations entitled "clauses of derogation" allows Members to temporarily suspend the application of measures of liberalization taken or maintained in accordance with the provisions of the Code. A derogation may only be invoked after demonstration of a seriously deteriorating balance-of-payments situation or because the liberalization results in a "serious economic or financial disturbance" in the country concerned.

IV. Statements by participants in the GNS

14. The intention of this note is to focus on safeguard provisions of a temporary nature that respond to a pre-defined set of circumstances rather than permanent exceptions. Therefore, this section summarizes statements that have been made in the GNS concerning possible grounds for temporary safeguard actions in the services context. In the GNS discussions, a precise distinction has not been drawn between safeguard provisions involving a temporary suspension of obligations as compared to safeguard provisions that provide for exceptions of a more permanent nature. Similarly, in MTN.GNS/W/43/Rev.2 (Glossary of Terms) the concepts of safeguards, escape clauses, and exceptions are taken together.

15. The latter document covers submissions to the GNS up to MTN.GNS/W/46 and summary records of meetings of the GNS up to MTN.GNS/14. For convenience, the Annex reproduces the statements by participants relevant to this note and found in MTN.GNS/W/43/Rev.2. The Annex also supplements MTN.GNS/W/43/Rev.2 to include pertinent material in MTN.GNS/W/47 through MTN.GNS/W/66. As these documents were discussed in recent meetings of the GNS, attention will centre primarily on the discussions in the GNS regarding safeguard actions as reported in MTN.GNS/15 through MTN.GNS/24.

16. Safeguards and exceptions were discussed at the meetings of the GNS of 31 October-3 November 1988, 5-9 June 1989, and 17-21 July 1989. At the first of these meetings a submission by Peru (MTN.GNS/W/49) suggested that an agreement should allow for temporary exceptions, grounds for which could include balance-of-payments considerations (see paragraph 10 of the Annex). In response to the Peruvian submission, the representative of one country stated that temporary exceptions should be subject to clear rules and be agreed to multilaterally (MTN.GNS/18, page 11).

17. The meeting of 5-9 June 1989 (MTN.GNS/23) focused on the applicability of concepts for telecommunications and construction and engineering design services. Some participants indicated that without a clear idea as to the definition of trade in services and the coverage of the multilateral framework, the applicability of a safeguard provision could not be discussed in any detail. Nevertheless, it was considered that both national security and balance-of-payments considerations were possible grounds for safeguard actions. Other grounds that were suggested during the discussion of these two sectors included protection of infant industries, physical infrastructure, and national culture, as well as significant increases in imports and

the prevention of abuse of market power (including cross-subsidization and the monopolization of information).

18. The following considerations were also noted: (1) safeguards needed to be transparent, subject to time limits and specific criteria; (2) grounds for safeguard action, as well as the type of action undertaken might differ from sector to sector; and (3) to the extent that an agreement would include sales of services via establishment, this would have implications for the type of safeguard action that could be undertaken.

19. In the meeting of 17-21 July 1989 (MTN.GNS/24), which focused on transportation and tourism, a number of additional possible grounds for safeguard action were suggested by participants. These included environmental concerns such as traffic congestion, measures related to the achievement of drug enforcement objectives, dumping of service products, infrastructure development subsidies that act as an aid to the export of services, excessive market access of foreign providers, protection of indigenization programmes, rapidly growing payments for services leading to a balance-of-payments problem, and exogenous events - such as poor weather that impact negatively on a service sector such as the tourism industry.

20. The above summary, as well as the statements listed in the Annex, indicates a measure of agreement on the need for a mechanism allowing for temporary abrogations of the commitments that might be undertaken in the multilateral framework agreement on trade in a services. The discussion in the GNS has focused largely on possible grounds for government intervention to safeguard the interests of domestic producers of services or the national interest. While statements have tended to address both safeguard provisions and exceptions simultaneously, one impression that emerges from the discussions is that possible grounds for invoking safeguard provisions in the context of trade in services may be numerous. These include injury to producers (both in the sense of being due to dumping or subsidization as embodied in Article VI of the GATT as well as fair trade as embodied in Article XIX), lack of competition (in the sense of monopoly practices), balance-of-payments difficulties, environmental considerations, protection of networks (as in the case of telecommunications) and infrastructure (in the case of transport), etc.

21. In the context of the GATT, many of these grounds would be considered as constituting possible exceptions to an agreement. As noted above, provisions in the GATT pertaining to exceptions do not require parties to consult, and do not provide for compensation or for retaliation. What the grounds could be for exceptions as opposed to safeguard action is a possible question for consideration by the GNS.

22. Relatively little has been said in the GNS discussions regarding the precise nature of safeguard provisions in the context of trade in services; for example, what type of governmental intervention would be considered appropriate to protect domestic interests, what constitutes injury in the case of services production, and whom or what is to be protected from injury. In addressing these diverse considerations it may be useful to group the various issues under three headings. These are the grounds that

are agreed to be the legitimate basis for safeguard action, the procedures that are to be followed by the country invoking the action, and the instrument(s) that can be employed once a safeguard action has been decided upon. As discussed further below, both because of the characteristics that distinguish trade and production of services from goods, and because many services provide crucial linkage functions in the economy, grounds, procedures, and remedies used to safeguard domestic interests may necessarily differ from those relevant in the GATT to safeguard producers of goods.

V. Possible grounds for services-related safeguard provisions

23. As noted above, existing trade agreements contain various provisions allowing intervention in response to import competition that has been found to be injurious to domestic import-competing producers or the national interest. The summary of the discussion in the GNS illustrates that all of the considerations underlying the GATT provisions are also considered to be potentially relevant grounds for intervention in the case of production and trade in services. However, these potential grounds for safeguard action in the services context appear to go beyond those identified in the case of goods. In addition to the grounds for intervention found in Articles VI, XII, XVIII and XIX, possible grounds mentioned in the GNS for temporary protective action in response to injury caused by imports include the protection of infrastructure (such as telecommunications or road networks), the environment (e.g. liberalization of transport regulations having an unexpected negative impact on the environment), and competition (such as the abuse of market power).

24. It is clear that some of these potential grounds can only be relevant for specific types of services. For example, imports of medical services could be considered unlikely to have unforeseen consequences for a nation's infrastructure or environment. In the course of discussions in the GNS, it has been observed that the grounds for safeguard actions may vary depending on the service sector involved. This is an issue that does not arise in the goods context. One question that might then be considered is whether attempts should be made to agree to one general safeguard provision that may list a number of possible grounds for action, or whether sector-specific safeguard provisions should be pursued. A related question is whether a multilateral agreement on services should contain only one or multiple provisions (as in the GATT) allowing governments to intervene in different ways in response to certain specific circumstances.

25. Whatever route is pursued, a number of issues will have to be resolved insofar as defining situations where measures to suspend obligations can be introduced. Thus, for each possible ground for action, the question arises as to what the precise criteria could be that need to be satisfied. For example, injury of whom or what is to be considered as grounds for action and what can be understood to constitute injury? Is it possible to relate such injury, however defined, to (increasing) imports subsequent to the progressive liberalization of trade? How should imports be defined for the purposes of services trade and in the context of safeguard provisions? Given the paucity of data, how can it be established whether imports, however defined, have been increasing? Also, to the extent to which a

safeguard action involves the withdrawal of a concession, the nature of the action will presumably depend upon the manner in which trade liberalization is implemented. This, in turn, will depend in part on the definition of trade in services (e.g. the extent to which factors of production cross frontiers) and the agreed coverage of trade in services for the purposes of the multilateral framework (e.g. undertakings to liberalize will differ between sectors and transactions within sectors). Some of these issues are discussed in more detail in the remainder of this note.

26. More specifically, the focus will be on the possible interpretation of the constituent elements of safeguard provisions for services (such as injury, remedy and procedures) that respond to circumstances that are analogous,² but not necessarily identical, to those underlying Article XIX of the GATT.

VI. Injury

27. It would appear to be important to establish for the purposes of the safeguard provisions who or what is to be the object of injury. Based on the GNS discussions, entities that could be considered in this respect include both producers and consumers of tradeable services and features of the economy as a whole. The considerations expressed in the GNS relating to safeguarding features of the economy such as the infrastructure, environment, and degree of competition are far-reaching in scope and for practical purposes can be considered of nationwide importance.

28. One implication that might be considered by participants is the possibility of a safeguard provision designed to protect not just producers or consumers, but more broadly defined interests from injury as a result of increased imports. This follows from the fact that the impact of services on the economy as a whole is in many instances more far-reaching than for goods. For example, this is the case for telecommunications networks and other infrastructures, where the services involved provide crucial linkage function. Because of the linkages of trade and production of services with other activities within the economy, the costs and benefits of safeguard action are likely to impact widely on producers and consumers alike.

²The relevant sections of Article XIX for the purpose of this background note are: "If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession" (Text of the GATT, page 36, paragraph 1(a)).

Ultimately, the potential conflict of interest between those adversely and those favourably affected by a safeguard action can only be resolved if the costs and ³benefits of the action are evaluated against some objective criterion.

29. Actions such as those under Articles VI and XIX of the GATT generally require that domestic producers are injured (or are threatened by injury) as a result of dumping or subsidization, or of unforeseen increases in imports resulting from the obligations incurred under the agreement. For example, Article XIX focuses on protection of domestic producers of like or directly competitive products. The discussion in the GNS, as summarized above, has indicated that the traditional conception of injury to a producer may be too narrow for purposes of a multilateral services agreement.

30. A safeguard provision designed uniquely to protect producers from injury may lead to a number of difficulties in the context of services. For example, the discussion in the GNS has indicated that the term "producers" might be interpreted to cover not only private producers but the government as well, as the latter is often a major provider of services. Indeed, basic infrastructure and public utilities are often government owned and operated. Abstracting from the question of how to define producers of infrastructure or the environment but also from the question of government versus private production units, determining what constitutes a domestic producer may be more difficult in the context of services than in the context of goods-producing firms. An example pertains to the tourism sector. In the case of this sector being covered in an agreement, which producers would be considered to be engaged in tourism activities? As noted in MTN.GNS/W/50 and MTN.GNS/W/61, tourism comprises a wide range of disparate activities. A producer-based approach to safeguards might require agreement on what those activities are and what proportion of the constituent elements need to be affected adversely for the producer to be injured.

31. Another important issue that emerges in this connection is that to the extent that services may be provided through a local presence of foreign providers, what is understood to be "increased imports" and "domestic production" may have to differ from what is usually considered to be imports and domestic production in the language of the GATT and national legislation. In particular, to the extent that provision of services occurs through sales by foreign firms via a local presence, and that such services are considered to be within the definition of trade in services, a number of questions arise. What constitutes domestic ownership, for example, may differ according to national provisions relating to equity participation, and may thus have to be considered in determining the definition of trade in services for purposes of an agreement. In practice it may be difficult to

³In this respect, the recommendation of the Leutwiler Group concerning the use of a "protection balance sheet" by an independent domestic agency to analyse the costs and benefits of trade policy actions could be pertinent. See Trade Policies for a Better Future, Geneva, GATT, 1985, pages 35, 52-56.

determine the ownership of a firm. Additionally, one firm may be the joint provider of interrelated products (both services and goods) - some of which may be considered injurious and others not. This is one example of a situation where the distinguishing characteristics of services leads to a situation that is quite different from that pertaining to trade in goods.

32. What could be understood under "injury" in the services context will depend in part on what is to be safeguarded, in part on the definition of trade, and in part on the type of obligations that are incurred. Depending on the extent to which the multilateral framework includes services involving cross-border movement of factors of production where such movement is essential to suppliers, the question will have to be addressed whether and how safeguard actions may affect a foreign exporting firm operating in the importing country. Thus, matters relating to safeguard provisions are closely linked to how trade in services is defined for the purposes of the negotiation.

33. The discussion in the GNS (see paragraphs 18 and 20), indicates that possible grounds for services-related safeguard action may derive in part from the fact that services can play an important support and infrastructure role in the functioning of an economy. Transportation, storage, telecommunications, and distribution services are frequently crucial in linking producers to each other and to consumers. An implication of this is that decisions to admit or restrict the entry of imported services may well have a substantial impact on the economy as a whole. As noted above, the important linkage and support role of many services with respect to the economy as a whole suggests that a wider conception of injury for services-related safeguard actions may be relevant. That is, participants might wish to consider the question of whether an economy-wide perception could be employed instead of (or in addition to) an "injury to producers or consumers" as a result of increased imports criterion. One potential benefit of such a broad approach is that it could avoid some of the problems that arise in defining precisely what constitutes "injury" and "domestic producers".

VII. Remedies

34. A number of issues arise when considering the remedial action that could be taken when implementing safeguard provisions for trade in services. In the case of goods trade, Article XIX, for example, speaks of the suspension of obligations or withdrawal of concessions pursuant to the implementation of undertakings to liberalize trade. If similar procedures for suspending obligations or withdrawing concessions are adopted in a multilateral agreement on services, this would appear to imply that the nature of the action that could be taken would very much depend on the nature of the obligation or commitment that was undertaken in the process of the progressive liberalization of trade. This, in turn, will relate to the manner in which trade liberalization is implemented, and raises the question whether all aspects or components of the commitments undertaken under an agreement will be such that they can be reversed. In principle, as noted in paragraph 13 of the Annex, safeguard action may imply the temporary withdrawal of concessions such as market access, progressive liberalization, or national treatment.

35. In the context of trade in goods, measures of trade protection generally imply the use of border measures - tariffs, tariff quotas, or quantitative restrictions. Therefore, the withdrawal of concessions could involve implementing a tariff increase. Because of the intangibility and non-storability of most services - which frequently require provider or consumer mobility - such measures may be difficult to employ with respect to services trade. One obvious reason is that it will frequently be difficult, if not impossible, for customs officials to observe the means of production or the service itself passing the frontier. Much depends here on the type of service involved, particularly on the nature of the alternative modes of delivery that exist. For example, if the obligation undertaken is a commitment to offer national treatment, and such treatment is coupled with market access leading to a local presence, would the suspension of the obligation call for dis-establishment on the part of the foreign services provider?

36. For a number of service sectors it may be difficult to impose restrictions on foreign-supplied service products or sales by foreign-owned firms. If trade cannot be observed, intervention may have to focus on sales of the service product (i.e. consumption) or the activity of producing the service (i.e. production). However, it may not be feasible to distinguish sales or production of domestic firms from sales or production of foreign-owned firms. Even if such a distinction can be made, the problem already referred to of clearly ascertaining what constitutes a foreign firm remains to be addressed.

37. A further difficulty results from the possibility of multiple modes of delivery for many services. It is not inconceivable, for example, that injurious imports that become the object of safeguard action via one mode of delivery could be delivered via an alternative mode, thereby circumventing the safeguard measure. Nor is it inconceivable that a service delivered by one mode of delivery that is considered injurious may not cause injury if delivered by an alternative mode (e.g. no local presence may cause unacceptable unemployment whereas the problem is resolved if the delivery is via a local presence).

VIII Procedural aspects

38. In addition to the various conceptual issues that have been raised, it needs to be recognized that data of the kind that is available for use in the context of goods-related safeguard investigations will frequently not be available. Thus, it can be expected that in many cases no statistics will exist on the value or volume of imports, and therefore on the changes that have occurred. Nor are the statistics that do exist generally available according to origin and destination of trade, so that the source of the import cannot be identified through resort to conventional international statistics. This is a practical problem and not a conceptual one. However, it may have implications for the procedures that are to be followed in services-related safeguard actions, and this might be a question for participants to consider.

39. In the safeguard provisions described earlier, actions are required to be as transparent as possible and potentially affected parties are to be notified. Governments may wish to consider whether this is appropriate in the case of trade in services and whether affected parties may need to be given the opportunity to consult, and may have the option, subject to certain conditions, to retaliate or demand compensation. The specific procedural implications of such requirements are another possible subject for consideration in the GNS.

IX. Possible questions for discussion

- . What is the need for safeguard provisions in the multilateral agreement on services?
- . Should a distinction be made between safeguard provisions and exceptions?
- . Would the grounds for safeguard action differ according to the traded service concerned?
- . Should a distinction be made between situations involving subsidization, dumping, or monopoly practices and other situations? If so, does this imply that there should be more than one kind of provision for action in a multilateral services agreement?
- . What is the entity whose interests are to be safeguarded? Is it the producer, the consumer, the economy at large or each of them? If it is the latter, how are the benefits to producers of restricted imports to be measured against the costs to the consumer?
- . What is to be the criterion to measure the degree of severity of the situation that warrants safeguard action?
- . If safeguard procedures are to be adopted pursuant to the implementation of a commitment to liberalize trade, what constitutes expanded imports for the purpose of the safeguard provisions? What constitutes trade in services for the purposes of safeguard provisions? If trade is considered to include local production by a foreign entity, should/can this be dealt with in the same manner as cross-border services trade?
- . What measures can be adopted in the event of a positive finding with respect to the need for safeguard action?
- . How would such measures differ from the case of goods? Can, for example, obligations and concessions be withdrawn in the case of trade in services? Is there a need to ensure that the withdrawal of some concessions (e.g. national treatment) do not breach other provisions of the arrangement (e.g. non-discrimination)?
- . How is the need for - and nature of - safeguard provisions affected by the special characteristics of the production, trade and progressive liberalization of trade in services?

Annex

SAFEGUARDS: STATEMENTS BY PARTICIPANTS IN THE GNS

1. Temporary escape clauses to cover market disruption, balance-of-payments difficulties, and national security considerations should be provided, but with limits on the action which may be based on them. (MTN.GNS/W/29, page 7)
2. An escape clause for a services agreement would have a different content to the similar GATT provisions. (MTN.GNS/13, paragraph 21)
3. One could envisage elaborating a clause regarding the staging over time of any unexpected effects of new commitments deriving either directly from the multilateral framework or from agreements concluded under its auspices, and likewise provisions concerning measures tolerated in the event of difficulties of a structural character. (MTN.GNS/W/45, page 5)
4. It is necessary to examine the safeguards on trade in services with due heed to the disciplines of GATT on safeguards, and taking into account the special characteristics of trade in services and the result of the examination in the GNG. (MTN.GNS/W/40, page 5)
5. It is evident that an adequate discussion has not yet taken place as to the essential requirement in any agreement on trade in services of protecting the growth of services in the developing world from instant competition. There is an essential need for initial protection for infant services in the developing countries. (MTN.GNS/12, paragraph 46)
6. There is a need for a safeguard mechanism in order to protect the objectives of national security and promotion of infant industries, and for dealing with consumer protection. (MTN.GNS/7, paragraph 9)
7. Attention also had to be paid to how a clause allowing restrictions to safeguard the balance of payments could operate. (MTN.GNS/13, paragraph 21)
8. Elements to be provided for a multilateral framework should include emergency measures (e.g. balance of payments). (MTN.GNS/W/33, page 7)
9. One would have to discuss whether, for example, safeguards could be included in the general framework or only in specific sectoral agreements. (MTN.GNS/14, paragraph 8)
10. The framework agreement should include certain exceptions for developing countries, which might be permanent or temporary. The permanent ones would allow a country to exclude from agreements certain policies or rules that are vital for its development and national security. The temporary ones would be waiver clauses that would have to be focused on preventing balance-of-payments disturbances and affording the initial and temporary protection needed by nascent services of developing countries. (MTN.GNS/W/49, page 2)

11. What are the types of safeguard actions that need to be provided for in this sector? Which national policy objectives concerning this sector could justify exceptions under the multilateral framework? Could a time limit be envisaged for such exceptions? (MTN.GNS/W/51, page 4)

12. National security considerations may be relevant through the reservation of certain CES projects for local contractors. Balance-of-payments measures might also be pertinent at times of foreign exchange shortage which could impede or complicate the execution of certain CES projects. (MTN.GNS/W/53, page 10)

13. In the construction sector, a number of possible safeguard measures may be considered on the grounds of infant industry argument in the case of developing countries; balance of payments and temporary disruption of the construction market caused by a sudden increase in "imports". In all three cases the safeguards may concern one or more of the following elements: (a) temporarily suspending access to the importing country for foreign firms; (b) temporarily suspending the progressive liberalization process as of a given point; and (c) temporarily suspending application of some of the elements of national treatment. Specific measures could also be taken regarding m.f.n. treatment, but this would not appear appropriate since the ensuing discrimination would not comply with a fundamental element of transparency. Safeguards would have a different character in the case of hypothesis I for the definition of international trade in services than in the case of hypothesis II, since in the latter case it would be difficult to apply safeguards to production factors already indefinitely established in the importing country. (MTN.GNS/W/57, page 9)

14. The main type of safeguard action allowed for in the body of rules governing international civil aviation is contained in Article 89 of the Chicago Convention which stipulates that, in cases of war or of national emergencies that are notified to ICAO's Council, the provisions of the Convention "shall not affect the freedom of action of the Contracting States involved". Safeguard and exception provisions are usually contained in bilateral agreements, safety and national security considerations being the main rationales of national air transport measures which might constitute departures from agreed commitments. (MTN.GNS/W/60, page 14)

15. Safeguard measures as concerns maritime transport may be based on serious economic disturbances or balance of payments difficulties. Exceptions could be claimed because of existing multilateral or regional arrangements as a means to avoid conflicts of obligation between these arrangements and the results averaging from the GNS negotiations. National security and defence considerations as well as national cabotage laws could also lead to a claim for exceptions (especially those where national defence considerations directly apply such as in the case the transport of sensitive military equipment). (MTN.GNS/W/60, page 28)

16. The framework agreement can and should include various types of safeguards for dealing with different situations. These safeguards may concern: (1) balance-of-payments problems; (2) growing and unforeseen imports of a service; or (3) development of an infant industry. In the case of

hypothesis I, safeguards may arise, for example, when licence or franchise payments begin to grow rapidly (safeguards for balance-of-payments reasons or unforeseen growth in imports) or if there is a desire to develop a national charter industry. With regard to hypothesis II, the main safeguard would concern the development of an infant industry, such as travel agencies. (MTN.GNS/W/62, page 12)

17. Some of the rules and principles, particularly transparency, disputes settlement, safeguards and institutional provisions, will represent obligations to be implemented by all signatories from the moment of entry into force of the framework. A very limited number of general exceptions may need to be provided for in the framework (e.g. for reasons of national security, public order). (MTN.GNS/W/66, page 1)