

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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

MEETING OF 11, 12 AND 14 SEPTEMBER 1989

Note by the Secretariat

1. The Negotiating Group met on 11, 12 and 14 September 1989.
2. The main agenda item was the examination of the draft text of a comprehensive agreement on safeguards (MTN.GNG/NG9/W/25) which was based on proposals by participants and drawn up by the Chairman as required by the Trade Negotiations Committee. The Chairman reiterated that the paper was presented under his own and exclusive responsibility. It was not intended to be a detailed draft agreement, but a framework and a general structure serving as a basis for negotiations.
  - A. Draft text of a comprehensive agreement (MTN.GNG/NG9/W/25)
3. The Chairman first referred to the report of the Chairman of the Group of Negotiations on Goods to the Trade Negotiations Committee (MTN.TNC/12), in particular to page 3 of that report in which the Chairman of the Group of Negotiations on Goods stated that substantive negotiations should have already been well under way in this Group. He pointed out that, according to the timetable set out by the Chairman of the TNC, the Group should aim to complete its work by the middle of next year so that the negotiations as a whole could be concluded at the final meeting of the Uruguay Round in November/December 1990.
4. The Group had a wide ranging discussion on the draft text on the first day of the meeting. On the second day, after a short discussion on the procedure to be followed, the Group agreed to address the draft text section by section, focusing its attention on the first two sections of the paper. The following paragraphs summarize the comments and observations made during the meeting on the draft text by various delegations.

General

5. Most delegations welcomed the paper as a comprehensive, integrated text which served as a useful and sound basis for further negotiations. Some delegations said that it contained some points to which they could not

subscribe and some parts which were rather ambiguous, reflecting a lack of consistency and balance. It also contained terms and concepts which needed to be more explicitly defined or elaborated, or which required further discussions in the Group before they could be incorporated in a workable agreement on safeguards.

#### Section I: General provisions

6. One delegation suggested the deletion of the word "safeguard" in paragraph 1 in order to include also "grey-area" measures in the coverage of the agreement. Another delegation said that the meaning of "to give protection to domestic industries" was too wide and should be replaced by "to prevent or remedy serious injury" as was mentioned in Article XIX. One delegation was concerned with the use of the word "designed" in the first two paragraphs because it implied intent and gave the wrong connotation about the purpose of safeguard measures.

7. One delegation suggested to replace the term "emergency situations" in paragraph 2 with "serious injury". Another delegation said that the term "import relief measures" was too narrow to encompass all the various forms of safeguards such as export restraints. Several other delegations opposed any attempt to broaden the definition. They said that the definition of safeguard actions in paragraph 2 should include their temporary and non-discriminatory nature. It would also be useful if reference to exceptional circumstances was made in defining "emergency situations". To identify safeguards correctly, a linkage must also be established with Article XI, thus excluding any measures not based on the General Agreement. A few delegations feared that the linkage between adjustment and safeguards would entail the danger of prolonging safeguard measures. In one delegation's view, however, such a linkage would, on the contrary, make extensions of safeguard measures more difficult and expensive. Several delegations pointed out that the use of the terms "domestic industry" and "domestic producer" was not consistent throughout the text. One delegation stated that safeguards in paragraph 2 of the text referred to Articles II and XI and not Article XVI.

8. A number of delegations suggested the deletion of paragraph 3 because it gave undue prominence to adjustment assistance measures. There were situations, such as those involving certain agricultural products, where emergency short-term measures might be needed to remedy injury from increased imports, but which had nothing to do with the lack of competitiveness of the industry affected. Paragraph 3 moreover seemed to suggest domestic subsidization programmes. Some delegations said that the term "structural adjustment" needed a different definition, as the word "programmes" implied government-controlled measures to support industry cartels. One delegation said that it would suffice to indicate in a safeguards agreement that adjustment was an important objective.

Section II: Conditions

9. A few delegations said that the structure of Section II could be improved by breaking it down into several sub-sections. Besides, the questions of duration, form of relief and degressivity were not conditions for providing relief and hence should more appropriately be included in other sections. One delegation expressed surprise at the absence of any reference in this section to modulations and adjustment of quotas, to take into account the different degrees of injury in various situations.

10. Many delegations suggested that paragraph 4 should be reformulated by deleting the reference to other GATT articles which gave the impression that safeguard measures were only residual actions. It should be explicitly stated that safeguards were emergency measures temporarily taken to provide relief in conditions of fair trade, whereas Articles VI, XVI and XXVIII provided remedies to problems completely different to those that a safeguards agreement would address. One delegation said that the wording of the opening sentence of paragraph 4 suggested that it was necessary to establish that imports were causing serious injury in order to take safeguard action. This might not be possible in emergency situations. Several delegations stated that the term "sharp and substantial" was not appropriate and was liable to abuse as it was used in a situation of market disruption and not in the context of establishing injury. Experience with the MFA made them wary of the use of the word "sharp" as it could imply a very small increase in imports. One delegation suggested that the Group should attempt at a later stage to assign percentages to these terms. One delegation said that increase in imports could be absolute or relative. Another delegation said that the concept of "increased market share" should be incorporated to take into account increases in imports relative to domestic production even in the absence of increases in absolute terms.

11. Several delegations stressed the need for an injury enquiry to be conducted by an independent body to ensure transparency and objectivity. A few delegations thought that this would be rather difficult in view of the differing national systems. It was up to the national governments to decide which were the "competent national authorities", but the injury determination process had to be defined by the Group. One delegation said that the importance of threat of injury seemed to have been down-graded in the Chairman's draft, whereas injury as well as threat thereof were given equal importance in Article XIX. One representative said that he understood the term "like or directly competitive products" as products which were physically and functionally similar or substitutable and suggested the incorporation of interpretative notes to avoid different interpretations of these terms. Several delegations said that the causal link between the increase in imports and serious injury needed to be more clearly established. Increased imports should be the principal and predominant cause of injury. One delegation, nevertheless, believed that causality could not be used in the context of safeguards because increased imports were not the cause of injury but the consequence of the lack of competitiveness of the domestic industry.

12. Many delegations opposed selectivity in the application of safeguard measures, even if it was on a mutually-agreed basis and suggested the deletion of the footnote to sub-paragraph 4(c). They stressed that any comprehensive agreement on safeguards should be based on the basic GATT principles including the m.f.n principle. One delegation proposed one more footnote to suggest the notion of greater discipline for selectivity and normal discipline for measures based on the m.f.n. principle. The spokesman for a group of delegations, on the other hand, agreed that coverage was an issue that the Negotiating Group had to examine. In his view, the crucial question was whether the safeguards arrangement would be able to solve the problems of "grey-area" measures. One representative said that he was confident that there would not be a consensus to introduce selectivity in the GATT.

13. Several delegations said that the terms "serious injury" and "severe or critical overall deterioration" in paragraph 5 required further elaboration. The definition of "domestic producers" in paragraph 7 to include also those operating "within the customs territory of a customs union" should also be given further thought.

14. Many delegations remarked that factors such as "domestic prices", "import and export prices", "pace of import increase" and "wages" were irrelevant in the determination of serious injury or threat thereof. Some expressed the fear that the inclusion of an element such as "prices" would lead to the establishment of the concept of "low-cost suppliers" as was in the MFA. One delegation said that "prices" and "market share" related directly to the notion of relative increase in imports and therefore were relevant in the determination of injury. Another delegation said that paragraph 8 should also have a negative list showing the factors which should be excluded in the determination of injury.

15. Some delegations pointed out that the provision that "no safeguard measure shall have the effect of reducing the quantity of imports below a certain representative level" seemed to apply only to quantitative restrictions and not to safeguard measures which took the form of tariff increases. Some asked how the "previous representative level" would apply to new products. Many delegations suggested the word "previous" be replaced by "recent" and that the word "preferably" be deleted.

16. A few delegations expressed serious reservations about the suggestion in paragraph 10 of the draft text that safeguard measures exceeding a certain period must be coupled with adjustment measures, although they agreed that adjustment was often an important objective in taking safeguard measures. They said that structural adjustment should be an ongoing process regardless of whether there were safeguard measures in force, but when a safeguard action was taken, structural adjustment should be initiated forthwith. It was neither feasible nor appropriate to dictate any particular approach to the domestic producers or the governments concerned. It should suffice if any prolongation of the safeguard action

be made conditional on, inter alia, a demonstration that adjustment measures had been introduced in the initial period. A few other delegations said that some kind of recommendation would be more appropriate in this regard, rather than making adjustment measures mandatory. The relevant authorities, when evaluating a request for an extension of a safeguard measure, should perhaps examine the measures taken by the industry to decide whether these measures could be deemed sufficient to warrant an extension. Several delegations said that measures not accompanied by adjustment measures should be of very short duration.

17. One delegation suggested that there should be a maximum period for the application of safeguards and that it would be useful to have a public scrutiny process in evaluating requests for extensions of safeguard measures.

18. A spokesman for a group of delegations said that stricter disciplines were required with regard to degressivity. Several delegations suggested the deletion of the phrases "as soon as feasible" and "if possible" from paragraph 12 because they represented too much flexibility. One delegation said that the exporting country should be allowed to ask for a review of the situation after a safeguard measure was in place for a specific period of time.

19. Several delegations said that the period within which a safeguard measure should not be applied to the import of the same product should be more than the duration of the initial safeguard measure, while another said that greater flexibility was needed in this respect and that repeat actions should be allowed under specific constraints and conditions in order to avoid perpetuation of safeguard measures.

### Section III: Structural adjustment

20. A few delegations expressed doubts on the wisdom of making adjustment measures compulsory. The spokesman for a group of delegations said that structural adjustment should not become a bureaucratic machinery and that governments should have the choice of their assistance programmes. One delegation said that Section III over-emphasized structural adjustment as well as adjustment assistance measures. It was not the aim of this Group to devise a whole set of new disciplines governing adjustment assistance. The Group's main concern should be that any assistance measures, irrespective of their form or duration, should be consistent with the General Agreement.

### Section IV: Notification and consultation

21. One delegation said that the information to be provided to the CONTRACTING PARTIES referred to in paragraph 19 should also include

information as to why an investigation had been initiated. A standard format could be developed to facilitate the notification of necessary information in this regard. The issue of notification and consultation was important for the achievement of greater transparency. Another delegation questioned whether the Safeguards Committee could not play a rôle in the context of consultations referred to in paragraph 20, and whether the participation in such consultations should not be broadened to include smaller suppliers as well as parties affected by trade diversion.

#### Section V: Response to safeguard measures

22. One delegation said that the suggestion that compensation and retaliation should not be available in certain circumstances was an interesting one which needed careful consideration. This delegation, however, had problems with the suggestion that retaliatory measures might be taken on the grounds that adjustment measures had not been adopted. The spokesman for a group of delegations expressed concern at the suggestion of limiting the right to take counter-measures as well as linking retaliation to adjustment measures. A decision on paragraph 25 which proposed that compensation and retaliation should be exempted in cases where safeguard measures were of short duration would depend on the rights and obligations to be included in other parts of the agreement. Several delegations stressed the need to give special consideration to developing countries with regard to compensation. One delegation pointed out that the right to compensation was an important concept which needed to be upheld. The wording "may give" in paragraph 24 therefore seemed to weaken that important right.

#### Section VI: Developing countries

23. Several delegations found the special treatment envisaged for developing countries in this Section to be too broad and sweeping. The spokesman for a group of delegations stated that Article XIX actions must be non-discriminatory by source as they were to be taken in respect of products and not contracting parties. If the m.f.n. principle was to be upheld, no exceptions or exemptions should be contemplated. Although he fully supported the provisions in the General Agreement regarding special and more favourable treatment for developing countries, he did not believe that the particular suggestion in this Section would, in the long term, be in the interests of developing contracting parties. One delegation said that it was important to determine precisely the percentage of minimum market shares of developing countries below which safeguard measures would not be implemented against their exports.

Section VII: Governmental and non-governmental measures

24. Several delegations shared the objective of greater transparency with regard to non-governmental measures. However, they did not believe that notification of such measures could be made a strict obligation, as this assumed complete knowledge on the part of governments of what was happening in the private sector. Some believed that a provision for counter-notifications would be appropriate in this respect. Moreover, "non-governmental" and "whether or not covered by the terms of the present agreement" needed a clearer definition. A few other delegations suggested that transparency through notification, as provided for in paragraph 29, should be accompanied by a firm commitment either to bring "grey-area" measures into conformity with the provisions of Article XIX and the agreement on safeguards or to eliminate them within a specific time-frame. It was equally important to have a commitment that similar measures would in future be proscribed.

Section VIII: Surveillance and dispute settlement

25. Several delegations stressed the important function that surveillance and dispute settlement played in a safeguards régime. The spokesman for a group of delegations asked why there was no reference in paragraph 31 to a review of new measures introduced in accordance with the new safeguards régime.

Chairman's concluding remarks

26. The Chairman concluded the discussions by making a few observations on some of the remarks on the draft. He said that most of the comments referred to substantive points which required further discussions and negotiations. Some remarks had promoted a better understanding on certain concepts or national positions by the Negotiating Group. He recalled that his draft text had not been examined by the legal adviser, hence it might contain certain ambiguities, and terms or phrases which were of dubious meaning. He said that at its next meeting, the Group should continue discussing the draft text section by section, on the understanding that delegations were free to revert to any section that had already been addressed. During this phase, the aim was to record points which delegations wished to make on the text. In order to make the best possible use of the time available, he invited delegations to submit specific comments on the text to him, either directly or through the secretariat, before the next meeting.

B. Other business

27. It was agreed that the next meeting of the Group should be held on 30 October, and 1 and 2 November 1989, and that further meetings should take place on 12 and 13 December 1989; 29, 30 January and 1 February 1990; and 12, 13 and 15 March 1990.