

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/W/26
2 November 1989

Special Distribution

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

Original: French

COMMUNICATION FROM SWITZERLAND

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

The purpose of this communication is to set forth in detail Switzerland's position regarding the most important features of the negotiations on safeguards. It comprises two parts. A general commentary sets out the views of the Swiss delegation with regard to safeguards. The second part, in the form of an outline agreement (although it does not draw any conclusions concerning the agreement's final form), gives further details concerning Switzerland's views as contained in documents MTN.GNG/NG9/W/10 of 2 October 1987 and MTN.GNG/NG9/W/20 of 14 July 1988. It highlights the link between negotiations on safeguards and negotiations on subsidies. The basic elements of the Swiss approach to internal measures promoting structural adjustment are contained in document MTN.GNG/NG10/W/26 of 13 September 1989 and are annexed hereto.

I. Remarks

1. A solution to the problem of safeguards through the introduction of new rules that are applicable and effective in the real world is one of the essential elements of the Uruguay Round; such rules should be credible, that is to say simple and applicable without always raising almost insoluble problems of interpretation.

The formulation of such rules, however, implies an identity of views on certain basic elements on which the nature and orientation of the rules, and their possibilities and their limitations, inevitably depend.

2. "Safeguard clauses" are also "escape clauses". By definition, any safeguard action is government intervention in the functioning of the market, whereby a government aims to secure an advantage for its country's economy (or part of it) in relation to foreign competition. In principle, therefore, safeguard measures run counter to the fundamental objectives of the General Agreement (the liberalization and expansion of world trade). The point at issue is to decide which forms of intervention of this nature can be deemed acceptable and under what conditions.

3. Safeguard rules allow certain acts by importing countries and, where appropriate, reactions on the part of the exporting countries affected. Such acts usually come under the supervision of the CONTRACTING PARTIES and are restricted to specific situations (forms of competition). In such circumstances, safeguard measures precede (or replace) the dispute-settlement procedure. They do not, however, exclude it in situations not covered by the safeguard rules nor in cases relating to the way in which the latter are implemented.

4. Where there is competition that is deemed to be unfair, safeguards are justified as the reaction of the importing country to an infringement by the exporting country. The infringement must be specifically provided for in the General Agreement, otherwise the importing country cannot have recourse to "safeguards" but can only invoke Article XXIII. The General Agreement as it stands at present specifies a number of situations or specific difficulties that can justify recourse to safeguard measures. These situations should perhaps be defined more precisely or supplemented by specifying other cases, such as "targeting" or "surge" situations.

5. On the other hand, a safeguard clause that was applicable to any situation of fair, i.e. normal and ordinary, competition would literally reverse the meaning and fundamental scope of the General Agreement because, in principle, it would open the way to protection against all forms of competition. A general safeguard clause covering all situations not provided for in the present Agreement would no longer guarantee the exceptional nature of the safeguard and would therefore be unacceptable.

6. What safeguards can and should be tolerated to counter the "effects" of fair competition? In these circumstances, rising imports are nearly always the result and not the cause of the lack of competitiveness of domestic producers, who have become sensitive and vulnerable. Sensitivity to imports cannot be assimilated to injury or prejudice, attributable to the wrongful behaviour of a foreign government or a private competitor. This is why safeguards, which, like measures at the frontier, only deal with the symptoms of the situation and not with its causes, while furthermore penalizing fair play, are highly disputable from both the economic and the legal point of view (as has been shown in the very thorough studies undertaken inter alia by OECD). It would be desirable to leave such situations to develop in accordance with market forces alone.

7. Whatever measures are finally accepted, they must be used with the greatest circumspection because they are rooted in the shortcomings of the protected industry itself.

8. To summarize, if the authority of the multilateral rules and the discipline of the contracting parties are to be restored, they must become means of achieving common objectives and not ends in themselves. This is why the formulation of an instrument such as an agreement on safeguards necessarily implies an underlying consensus on its purpose, namely, the maintenance and, if necessary, rapid restoration of competition and the free play of market forces.

II. Outline of an agreement on safeguards

1. Principles

Any derogation from the General Agreement by an importing country in exceptional circumstances and not specifically provided for in other provisions of the Agreement, with respect to some of its sectors, whether in the form of measures at the frontier (import restrictions) or any other means, shall be considered to be a safeguard measure within the meaning of this agreement.

The contracting parties shall only have recourse to safeguard measures, and, where appropriate, countermeasures, in special cases and in accordance with the provisions and procedures laid down in the present agreement. They shall institute proceedings for infringement of this agreement, including for any measure that is not provided for or covered by the General Agreement, in conformity with the relevant provisions of this Agreement.

2. Emergency action on imports of particular products

The current Article XIX should be amended as follows:

Article XIX:1

(a) Safeguards in the case of sectoral difficulties due to sudden liberalization

If, as a result of unforeseen developments and of the effect of the obligations (whether tariff or other concessions established, at most, five years previously) incurred by a contracting party under this Agreement, 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 to 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.

The measures taken in accordance with this article shall only remain in force for a maximum of (one) year. Where these measures are not repealed after (one) year, they shall be governed by other provisions of the Agreement.

(...)

3. Other measures with regard to particular products: safeguards in the case of sectoral problems of a structural nature

3.1 Structural adjustment is a constant requirement and, in the first instance, is the responsibility of the industry itself. The contracting parties shall not, therefore, as a general rule,

alter the conditions of competition in favour of their domestic industry by means of measures at the frontier or other measures.

3.2 Where, in a situation of normal competition and provided no change in the trade régimes subject to GATT rules has taken place either in the importing or exporting country for at least (five) years, problems in an industry take the form of serious disruption such as a serious worsening of a regional economic situation or drastic deterioration of the level of employment, safeguard measures may exceptionally be applied.

3.3 The contracting party concerned may take appropriate measures according to the following modalities:

3.3.1 Measures at the frontier

- shall not be discriminatory;
- shall not restrict imports below the level reached during a reference period (for example the previous (x) years);
- shall be short-term and abolished as soon as possible, and at the latest (five) years after their entry into force;
- their progressive dismantling shall begin at the latest (six) months after their entry into force and shall be phased over regular periods separated by a maximum interval (of one year);
- their duration and their rate of dismantling shall be set out before their entry into force.

They shall not be re-introduced before (x) years have elapsed since their elimination.

3.3.2 Internal measures (which are being discussed within the Negotiating Group on Subsidies) shall necessarily act on the competitiveness of an industry in difficulty and shall be subject to the disciplines of Article XVI as revised in the Uruguay Round. (See in this connection the communication from Switzerland to the Negotiating Group on Subsidies, document MTN.GNG/NG10/W/26, II.2.2.1(i)).

3.3.3 Before taking any safeguard measures under this article, contracting parties shall notify the CONTRACTING PARTIES specifying:

- the type of measure and the description thereof;
- its date of entry into force;

- the duration of the measure and the dismantling programme which the importing country undertakes to follow.

After having taken a measure, the contracting parties shall report periodically on the implementation of the dismantling programme.

Any contracting party may notify a measure by another contracting party which the latter has not notified.

- 3.3.4 Safeguard measures taken in conformity with the above provisions shall not give rise to any compensation by the importing contracting party nor to any retaliatory measures on the part of exporting contracting parties.

4. "Surge"

Where there is particularly rapid growth in imports (more than (x) per cent compared to the previous year or over (n) consecutive months), contracting parties may exceptionally take emergency measures at the frontier. These measures shall under no circumstances reduce imports below the level for the same period during the previous year plus (y) per cent corresponding to the usual annual growth in trade in this sector. They shall not last for longer than (three) months.

5. General provisions

- 5.1 After having notified the safeguard measures, the contracting parties intending to implement them shall agree to begin consultations with contracting parties affected by the measures.
- 5.2 The Council shall take note of the notifications and shall monitor respect for multilateral provisions, including implementation of the dismantling programmes. It shall make findings (in accordance with procedures still to be agreed), concerning any infringement of these provisions including any actionable infringement.
- 5.3 Infringement of the provisions concerning the duration and dismantling of measures at the frontier and the dismantling of internal measures shall be actionable in the form of sanctions decided upon jointly by all contracting parties. Any measure taken that is not provided for in the provisions of this agreement shall be similarly actionable.
- 5.4 The collective sanction imposed by all the contracting parties shall consist of increasing customs duties by (x) per cent for all imports from the contracting party responsible for the infringement.

This increase shall remain in force for as long as the period for dismantling is exceeded (but for not longer than (x) years).

- 5.5 An importing contracting party that considers itself justified in contesting the findings of the Council and/or their consequences (sanctions) may resort to the dispute-settlement procedure.

An exporting country against which a measure not provided for in this agreement has been taken may refer the matter to the CONTRACTING PARTIES.

ANNEX

Extract from Document MTN.GNG/NG10/W/26
of 13 September 1989

2.2.1 Specific domestic subsidies (exhaustive list)

An exhaustive list of the following specific domestic subsidies is proposed which are exempted from countervailing action:

(i) Structural adjustment schemes

In order to enjoy the principle of non-actionability, domestic subsidies granted for the purpose of structural adjustment should stimulate investment and meet the following cumulative conditions:

- (a) the subsidized industry must be in difficulty, showing losses over a period of at least [X] years, and private sector efforts have proven to be insufficient or not sufficiently accessible;
- (b) structural adjustment subsidies should necessarily be of such a nature as to improve the competitive capacity of the industry (e.g. investment credit facilities), and not the conditions under which it operates (e.g. by lowering of the selling price through subsidies, or by way of contributions to salary or social security payments to the industry);
- (c) structural adjustment programmes should be strictly limited in duration and degressive;
- (d) structural adjustment subsidies should be capable of producing effects outlasting the payment of the subsidy. The conformity of a subsidy scheme with this principle could be assessed through periodical review in the light of the degree to which the objectives set out in the adjustment programme have been achieved; measures whose effects only last as long as they remain in force would not be covered.