

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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

SAFEGUARDS

Draft Text by the Chairman

Section I: GENERAL PROVISIONS

1. This Agreement* covers all safeguard measures adopted by a contracting party to give protection to a domestic industry in the circumstances specified below.
2. Safeguard measures consist of import relief measures that entail the suspension, in whole or in part, of obligations, or the withdrawal or modification of concessions under the General Agreement, adopted to prevent or remedy certain emergency situations, as provided for in Section II below, and to facilitate structural adjustment of a domestic industry or the reallocation of resources.
3. Adjustment assistance measures are those adopted by a contracting party in support of structural adjustment measures taken by a domestic industry under the conditions set out in paragraphs 11 and 12 and Section III below.

Section II: CONDITIONS

4. A contracting party [or a customs union] may apply a safeguard measure to a product being imported into its territory only in a situation in which other provisions of the General Agreement do not provide specific remedies and on the conditions that:
 - (a) there has been an unexpected, sudden and large increase in the quantity of such product being imported;
 - (b) the competent national authorities of the importing contracting party have established that such increase is causing or is threatening to cause serious injury to the domestic industry that produces like or directly competitive products.

* The legal form of this Agreement will be examined at a later stage.

5. Safeguard measures shall be applied to a product being imported irrespective of its source, subject to the provisions of paragraphs 28 and 29 below.*

6. Serious injury shall be understood to mean a severe or critical overall deterioration in the position of a domestic industry responsible for at least a major proportion of the domestic production of like or directly competitive products.

7. Threat of serious injury shall be understood to mean serious injury that is clearly imminent and is demonstrated to be a virtual certainty.

8. For the purposes of this Agreement, a domestic industry shall be understood to mean an industry operating within the customs territory of a contracting party [or within the customs territory of a customs union].

9. In the determination of whether or not serious injury or threat thereof exists, all relevant factors of an objective and quantifiable nature having a bearing on the position of the domestic industry shall be taken into account, such as: output, inventories, utilization of capacity, productivity, employment, wages, sales, market share, exports, domestic prices, import and export prices, pace of import increase, return on investment, profits and losses. This list is not exhaustive; neither one of these factors alone, nor even several of them may necessarily be decisive in the process of determination; but serious injury or threat thereof not causally linked to increased imports shall not weigh in the process of determination.

10. Safeguard measures shall be applied only to the extent as may be necessary to remedy or prevent serious injury or threat thereof and to facilitate adjustment. They should take the form of tariff increases, but may also take the form of quantitative restrictions. No safeguard measure shall have the effect of reducing the quantity of imports below a recent representative level.

11. A safeguard measure shall be applied only for the time as may be necessary to remedy or prevent serious injury or threat thereof and to facilitate adjustment. If the expected period of application exceeds (x) year(s), the measure must be coupled with structural adjustment measures.

12. The initial period of application of a safeguard measure may be extended, provided it is demonstrated that the situation justifies it, structural adjustment measures are taken and pertinent rules of Sections III and IV are observed.

* An examination of the possibility of admitting exceptions to the application of this principle has been initiated, but no form of words has yet been proposed to this effect.

13. The total period of application of any safeguard measure shall not exceed (y) years.

14. If the expected duration of any safeguard measure is over one year, it shall be progressively liberalized during the period of application. As soon as feasible, the contracting party adopting the measure shall review the situation and, if possible, withdraw the measure or increase the pace of the liberalization.

15. No safeguard measure shall be applied to the import of a product which has been subject to such a measure within the preceding (z) years.

Section III: STRUCTURAL ADJUSTMENT

16. In circumstances provided in Section II, a contracting party may adopt adjustment assistance measures to support structural adjustment measures taken by an industry without adopting safeguard measures, in order to avoid the application of the latter.

17. Adjustment assistance measures shall be applied only to the extent and for the time as may be necessary to support the industry concerned to remedy the serious injury, to prevent the threat thereof, to recover competitiveness or to reallocate resources, as the case may be.

18. If structural adjustment measures or adjustment assistance measures are taken in association with safeguard measures or in place of safeguard measures, the contracting party applying them shall provide the CONTRACTING PARTIES, through the Safeguards Committee, with all the relevant information on such measures.

19. There shall be no extension of any safeguard measure in the absence of evidence of adjustment.

Section IV: NOTIFICATION AND CONSULTATION

20. Before taking or extending any safeguard measure, a contracting party shall notify the CONTRACTING PARTIES, through the Safeguards Committee, of:

- (a) the initiation of an investigatory process relating to serious injury or threat thereof and the reasons for it;
- (b) the finding of serious injury or threat thereof; and
- (c) the decision to apply or extend the safeguard measure.

21. Once a contracting party has established the existence of serious injury or threat thereof and has decided to take a safeguard measure, it shall also provide the CONTRACTING PARTIES with all necessary information both on the establishment of serious injury or threat thereof and on the measure it proposes to adopt, the precise description of the product involved, the proposed date of implementation, expected duration, timetable for phasing out the measure and any other pertinent data.

22. A contracting party proposing to apply or extend a safeguard measure shall request, and give adequate opportunity for consultation with those contracting parties affected by such a measure. These contracting parties may also request consultations with the importing contracting party, with a view to reaching agreement on the application of the proposed measure.

23. In critical circumstances where delay would cause damage which it would be difficult to repair, a safeguard measure may be adopted provisionally before the consultations referred to above take place, provided the CONTRACTING PARTIES are notified forthwith and the said consultations are effected immediately after the provisional measure is taken. The period of application of the provisional measure shall not exceed (z) months, within which the pertinent requirements of this Section and of Section II must be met.

24. Contracting parties may counter-notify measures taken by other contracting parties which have failed to make the proper notifications. Counter-notifications shall entail consultations under the provision of this Section.

Section V: **RESPONSE TO SAFEGUARD MEASURES**

25. A contracting party affected by a safeguard measure may, within (n) days, suspend the application of equivalent concessions or obligations under the General Agreement to the trade of the contracting party applying such a measure in one or more of the following circumstances;

- (a) consultations referred to in paragraphs 22, 23 and 24 above have not been held;
- (b) agreement has not been reached with the importing contracting party in the consultations in which the affected contracting party has participated;
- (c) measures under the provisions of paragraphs 11 and 12 and Section III above have not been taken;
- (d) the maximum period allowed for the application of the safeguard measure has expired; or

- (e) it has been found by the Safeguards Committee or through a dispute settlement procedure that the safeguard measure does not conform to this Agreement.

26. A contracting party taking a safeguard measure may give compensation to the affected contracting parties. A contracting party agreeing to receive compensation shall not be entitled to suspend equivalent concessions or obligations.

27. The suspension of equivalent concessions or obligations and compensation shall not apply in the case of safeguard measures of duration not exceeding the period of (x) year(s) indicated in paragraph 11 above, provided such measures conform with the provisions of this Agreement.

Section VI: DEVELOPING COUNTRIES

28. Safeguard measures shall not be applied to exports of the least-developed contracting parties irrespective of whether these countries, individually or collectively, are principal suppliers or not.

29. Safeguard measures shall not be applied against products originating in less-developed contracting parties whose market shares in the products concerned are minimal [Z].

30. Less-developed and least-developed contracting parties shall have the flexibility in the conditions defined by the provisions of this Agreement to apply safeguard measures, structural adjustment measures and adjustment assistance measures which their individual development, financial or trade situation requires.

Section VII: GOVERNMENTAL AND NON-GOVERNMENTAL MEASURES

31. Contracting parties shall keep the CONTRACTING PARTIES informed of their laws, regulations and administrative procedures relating to safeguard measures.

32. Contracting parties shall notify the CONTRACTING PARTIES of all existing safeguard measures and other measures having the effect of safeguard measures as defined by this Agreement, whether or not covered by its provisions, and keep the CONTRACTING PARTIES informed of all new measures.

33. Contracting parties undertake to notify and keep the CONTRACTING PARTIES informed of all non-governmental measures on which information is available to them.

34. Contracting parties may counter-notify measures dealt with in paragraphs 32 and 33 above which have not been notified.

35. The provisions in paragraphs 20, 21, 24, 32, 33 and 34 above shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

36. Contracting parties agree to phase out promptly all safeguard measures inconsistent with the provisions of this Agreement or to bring them into conformity with these provisions.

Section VIII: SURVEILLANCE AND DISPUTE SETTLEMENT

37. There shall be a Safeguards Committee under the authority of the CONTRACTING PARTIES, with the following functions;

- (a) to report annually to the CONTRACTING PARTIES on the general implementation of this Agreement and make recommendations towards its improvement;
- (b) to monitor the application of all measures taken under the provisions of this Agreement and report, as appropriate, to the CONTRACTING PARTIES;
- (c) to monitor the implementation of Section VII of this Agreement, especially the phase-out of measures not consistent with it;
- (d) to review at any time, at the request of an affected contracting party, any measure that is, prima facie, inconsistent with this Agreement;
- (e) to assist contracting parties, as appropriate, to develop agreed solutions to problems arising from the application of safeguard measures; and
- (f) to perform any other duty connected with measures dealt with in this Agreement that the CONTRACTING PARTIES may determine.

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