

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/14

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Special Distribution

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

MEETING OF 29 AND 31 JANUARY, 1 AND 2 FEBRUARY 1990

Note by the Secretariat

1. The Negotiating Group met on 29 and 31 January, 1 and 2 February 1990 under the Chairmanship of Ambassador G. Maciel of Brazil.

I. Proposals by participants

2. The Chairman said that since the last meeting held in November 1989, communications had been received from the delegations of Bangladesh and Mexico. They were circulated in MTN.GNG/NG9/W/27 and MTN.GNG/NG9/W/28 respectively. He expressed appreciation for these papers and said that the specific proposals therein had contributed to the work of the Negotiating Group. The representative of Mexico said that instead of making a general introduction to his paper, he would, as suggested by the Chairman, speak later when relevant specific points of the Chairman's draft text were addressed.

3. The European Communities circulated a proposal on 31 January 1990 which was subsequently issued in document MTN.GNG/NG9/W/29. Introducing the proposal, the spokesman for the Communities said that what was envisaged was that if, following an investigation to determine injury, it was established that a large increase in imports, primarily due to certain identified sources, was causing injury, the authorities of an importing country could take safeguard measures commensurate with the injury against certain suppliers. He stressed that the proposal referred to injury and not threat of injury. Prior consultations with the countries concerned were also envisaged in order to reach agreements. If agreements could not be reached, the importing country might nevertheless restrict imports from these supplier countries, which would then be free to take counter-measures or retaliatory actions. The proposal was in favour of a short-term period for the measures and the period of application could not be renewed or prolonged. Interim precautionary measures could be taken before the end of the investigation but they could not exceed the investigation period which had a maximum duration of eight months. There were therefore full guarantees for exporting countries in the proposal. The first guarantee was that injury, and not threat of injury, was the reason for action. The

second was that safeguard measures would be proportional to the injury. The third guarantee was that the measures would be limited in time as interim precautionary measures could not exceed eight months while final actions would not be extended. The fourth guarantee was the possibility of retaliation which would promote satisfactory solutions for all parties concerned. Finally, there was the function of multilateral control by the Safeguards Committee. Thus, the Community proposal was offering certainty, transparency and multilateral control as opposed to uncertainty, arbitrariness and the bilateral approach. This proposal did not occur in a vacuum. It represented a refinement of Part IV of the previous Community proposal in MTN.GNG/NG9/W/24/Rev.1 which described some circumstances requiring a solution which, though selective, would nevertheless be accompanied by the adequate guarantees for the exporting countries. The current safeguards system in GATT was being undermined by the constraints of Article XIX, by the difference of the levels of tariff bindings and by the disequilibrium involving exceptions and waivers under the General Agreement. The proliferation of measures taken outside GATT were weakening the GATT system by accentuating unilateral and bilateral approaches to trade problems. It should be recognized that countries taking such measures did so in response to situations which could be settled adequately only on the basis of a fresh outlook within GATT. The only realistic approach to pursue the objective of the Negotiating Group was to develop a new framework of rules for the importing and exporting countries when confronted with situations which required the adoption of safeguard measures.

4. Many delegations said that the Community proposal only served to highlight the dangers of a selective safeguards system. They said that GATT was based on the sacrosanct most-favoured-nation principle. Any renegotiation on this fundamental principle would only weaken it and should therefore be avoided. Selectivity in respect of safeguards was aimed at the smaller, weaker parties with little economic and political clout. One representative expressed surprise at the timing of the proposal on selectivity as he expected it to emerge later in the negotiations. He asked if an importing country could single out individual Member States of the Community and apply restrictions against their exports selectively, or if safeguard measures would be applied to the Community as a whole. Another representative said that the reason why his delegation had been insisting so much on the idea of structural adjustment was to try to identify some ways within the framework of GATT so that exporters would not have to bear the burdens of difficulties for which they were not responsible. One delegation said that selective actions would necessarily be taken against the efficient exporters. However, once the efficient exporters were restricted, the less efficient exporters would be meeting the demand in the importing country. The result was that the selective safeguard action taken to protect the domestic industry would become ineffective and a further clamour by the industry to extend the restrictions to other countries would expand the scope of the safeguard action. Another delegation said that many small and weak economic entities

were motivated to join the GATT because it offered them equal treatment and non-discrimination alongside the big and powerful countries. One representative said that the m.f.n. was the fundamental principle of GATT which should constantly be kept in mind during the Uruguay Round negotiations, particularly in the Negotiating Group on Safeguards. He urged extreme caution in discussing the question of selectivity so that the Group would not take a backward step. Another representative said that the Community proposal was a very interesting one although he recognized the long-standing difference between unilateral selectivity advocated by the Community and consensual selectivity. There was a need for realism in the question of m.f.n. versus selectivity. He felt strongly that this issue should be addressed in the negotiating text of the Negotiating Group, sooner rather than later.

5. Many delegations asked how, under the Community proposal, certain suppliers would be identified and how an importing country would pick its choice among the sources causing injury. Would the largest suppliers or would countries with the least possibilities of taking retaliatory measures be chosen? They said that they did not trust any arrangement which could be manipulated for targeting particular countries. One representative said that selectivity was a weapon meant to be used only against the developing countries. A number of delegations referred to the critical circumstances under Article XIX which provided for the adoption of provisional safeguard actions without prior consultation after the clear establishment of injury, and said that under the Community proposal precautionary measures could be taken when the investigation was still going on. This caused them great concern because it was possible that such an investigation might not establish any injury in the end but meanwhile the exports of exporting countries were subject to restrictions. One representative remarked that since it was already very difficult to measure injury collectively, it would be even more difficult to measure injury individually in order to apply safeguard measures proportional to injury caused by different suppliers. One delegation asked if injury would be determined with respect to the Community market after 1992 as a whole, or with respect to individual markets of the Member States. Another delegation asked if the provisions of Article XIII would be followed in the administration of quotas and if the interests of new suppliers would be taken care of.

6. Several delegations said that since an importing country could impose an interim precautionary measure selectively even if the identified sources disagreed with the importing country on injury determination, the consultations between the two parties would only promote bilateral deals or "grey-area" measures. One delegation said that "grey-area" measures represented a malignant growth in the international trading system and the task of the Group was to eradicate this growth and not to formulate laws and rules to embrace it within the system. One representative refuted the idea of introducing selectivity to GATT in order to bring "grey-area" measures under control. He would prefer an Article XIX which was not so rigidly defined in other elements to allow parties to use it. Some

delegations asked how the Community proposal would contribute to the elimination of the "grey-area".

7. Several delegations asked about the relationship between the maximum period of eight months for the interim precautionary action and the maximum of "y" months for the final action. Some said that eight months was too long a period for injury determination.

8. Several delegations said that the possibility of retaliation by small and weak exporting countries was remote and could only be regarded as a hollow guarantee. One of them said that it would never retaliate because that would only hurt it even more. A few delegations said that they were intrigued by the suggestion that exporting countries subject to safeguard measures might, on grounds of fairness, request the extension of the restrictions to other suppliers. One delegation said that this proposal was unfair because it transferred the political problem of an importing country to the exporting country. Another delegation remarked that if a safeguard measure was extended at the request of an exporting country and if the exporting country requested that the measure be applied to all suppliers, then there would be in the end a most-favoured-nation situation.

9. A few delegations referred to negotiations in other areas. One representative warned that the issue of selectivity could rock the Uruguay Round. M.f.n. and non-discrimination were being proposed as a cardinal principle in the negotiations on services and TRIPs, but it was now suggested that this principle could be dropped from GATT. Another representative said that it would be unacceptable if, assuming that the Negotiating Group on Textiles and Clothing succeeded in eliminating the Multi-Fibre Arrangement, one specific selective safeguard system was to be replaced by a general selective safeguard system. One representative said that he looked at the Community proposal particularly with agriculture in mind.

10. Several delegations pointed out the absence of a reference to special and differential treatment for developing countries in the Community proposal. A few delegations said that while they were not insensitive to the developmental needs of the developing countries and particularly the least-developed among them, their position was that all safeguard actions must be erga omnes and that the principle of m.f.n. and non-discrimination should not be compromised in any way. One delegation said that safeguards was not an appropriate area to speak of differential treatment, and the greatest losers in the end would be developing countries if any distinction was made. One representative said that it was inconsistent for some developing country representatives to preach m.f.n. one day and to argue for selectivity the next, when it suited them. One delegation responded that special and differential treatment for developing countries, especially small suppliers and new entrants, had nothing to do with selectivity. Another delegation said that the principles of m.f.n. and

preferential treatment for developing countries were perfectly compatible and were legally accepted under the General Agreement. The principle of m.f.n. was in Article I and the preferential treatment for developing countries was set out in Part IV. Developing countries were unfortunately not on an equal footing with developed countries in economic or trade terms, and preferential treatment to them had made it possible for negotiations to take place on a fair basis.

11. The spokesman for the Communities reminded the Negotiating Group that the paper under discussion represented only a small part of the entire Community proposal (MTN.GNG/NG9/W/24/Rev.1). The general message in that proposal was that most safeguard measures should be m.f.n., but its Section IV pointed out that certain circumstances might require a selective solution with adequate guarantees for the exporting countries. He said that the aim of the Negotiating Group was to address problems of the real world and to negotiate a usable safeguards clause which would achieve trade liberalization. Referring to specific points raised by delegations, he said that many of them were technical points or problems of definition which were subject to further negotiations. He would therefore refrain from commenting on them. He would also refrain from repeating the points he had made when he introduced the proposal (paragraph 3 above). He said that the Community proposal never intended to arbitrarily target any supplier. The injury investigation would give indication of the source of injury and the action to be taken would be proportional to the injury. All countries would be treated in the same fashion if imports from them were causing injury. Injury was therefore a very important function of the proposal and there should be a sound injury test. The maximum period of eight months for the interim precautionary action was intended to limit the period of injury investigation. It could be less than eight months if the investigation was completed before then. The "y" months maximum for the final action had to be negotiated, but obviously it should be shorter than the first period under Track I of the Community proposal which it was suggested should be three years. He agreed with what some delegations stated about the ineffectiveness of counter-measures and said that he was in favour of a process of intensive consultations rather than the threat of retaliation. On the question of the "grey-area", he said that it would be disastrous if Article XIX became less and less usable, because that would mean each party would feel free to do what it wanted and the outcome would be complete lack of constraint. As for special and differential treatment, he said that what happened very often was that this was accorded to the least-developed countries whose exports generally did not intervene too much in the markets of the importing countries.

II. Draft text of a comprehensive agreement (MTN.GNG/NG9/W/25/Rev.1)

12. The Negotiating Group started a detailed examination of the revised draft text of a comprehensive agreement prepared by the Chairman following comments on his initial draft at previous meetings. The Chairman invited delegations as far as possible to make specific drafting suggestions. The Group examined the draft paragraph by paragraph and finished up to paragraph 20 by the end of the meeting. The main specific drafting suggestions were as follows:

Section I: GENERAL PROVISIONS

Paragraph 1 "This Agreement covers all safeguard measures adopted by a contracting party to give protection to a domestic industry in the circumstances specified below."

Suggestions:

- (i) To ensure that all safeguard measures including measures with safeguard effect are covered, this Agreement should apply to "measures taken for the above purpose or having such effect not provided for under other GATT articles, agreements or arrangements".
- (ii) The word "adopted" implies intent. Suggest "... safeguard measures which provide import relief ..." to get the intention out.
- (iii) Use language in Mid-Term Agreement, "to re-establish multilateral control over safeguards by eliminating measures which escape such control" to ensure that all safeguard measures are covered.
- (iv) Add a second sentence to this paragraph: "Hereafter, there will be no safeguard action outside this Agreement".
- (v) Change "protection" to "temporary import relief".

Paragraph 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."

Suggestions:

- (i) It should be made clear that safeguard measures are border measures, different from structural adjustment.
- (ii) Replace the word "adopted" by "and that operate".
- (iii) Replace "certain emergency situations" by "serious injury to domestic industry".
- (iv) Delete "reallocation of resources".
- (v) This paragraph could be amended along the following lines:
"Safeguard measures are temporary trade restrictions that entail ..., adopted to prevent or remedy serious injury to a domestic industry, as provided ..., and to facilitate orderly adjustment".
- (vi) Delete last two lines of the sentence.
- (vii) Add "temporary" before "import relief".
- (viii) Add "as referred to in Section III" at the end of the paragraph and then delete the third paragraph.
- (ix) Change first line to "Safeguard measures consist of exceptional and transitory relief measures to deal with the effects of a rise in imports, both in absolute terms and in relation to domestic production, which entail the suspension, ...etc.".
- (x) After the word "adopted" insert "in terms of Article XIX of GATT".
- (xi) Add "as appropriate" before "to facilitate structural adjustment".

Paragraph 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."

Suggestion:

- (i) Delete this paragraph.

Section II: CONDITIONS

Paragraph 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:"

Suggestions:

- (i) Delete the phrase "only in a situation ... do not provide specific remedies and".
- (ii) Paragraph 5 without the footnote should be put in this paragraph.
- (iii) Add a new sub-paragraph (c) "the importing contracting party proves that there is a causal link between the elements referred to in (a) and (b) above".
- (iv) The title of this Section should be changed to "Conditions for border measures".
- (v) Delete the phrase "only in a situation in which other provisions of the General Agreement do not provide specific remedies".
- (vi) Combine sub-paragraphs (a) and (b) to make the causal link clearer.
- (vii) Reference to Article XIX of GATT must be made here.
- (viii) "Safeguard measures may be applied whenever the competent authorities of the importing contracting party [or a customs union] have established that a product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause, or threaten to cause, serious injury to domestic producers of like or directly competitive products."

Paragraph 4(a) "there has been an unexpected, sudden and large increase in the quantity of such product being imported;"

Suggestions:

- (i) Increase in imports have to be "both in absolute terms and in relation to domestic production".

- (ii) "Sudden and large" should be replaced by "actual or relative".
- (iii) Whether the increase in imports is a principal cause or a negligible cause should be defined.
- (iv) Delete "unexpected".

Paragraph 4(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."

Suggestions:

- (i) Add "directly" before "causing or is threatening ...".
- (ii) Replace "or" by "and" in "like or directly competitive products".
- (iii) "an independent body has established, through a public domestic investigation and decision which included notice to interested parties, public hearings where importers and other interested parties could present evidence and their views, and a published report of the decision describing the factors considered, criteria applied and rationale used, that such increase is causing or is threatening to cause serious injury to the domestic industry that produces like or directly competitive products."
- (iv) Minimum domestic guidelines will have to be developed.
- (v) The "national authorities" should be an independent body.
- (vi) "the competent national authorities ... that such increase is direct and principal cause of the serious injury and threat thereof to the domestic industry that produces like or directly competitive products."

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

Footnote

"* 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."

Suggestions:

- (i) Delete the footnote.
- (ii) "Safeguard measures should be applied to a product being imported irrespective of its source [or selectively on a mutually agreed basis subject to stricter disciplines and surveillance] [or selectively on a mutually agreed basis]."

Paragraph 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."

Suggestions:

- (i) "Major proportion" is to be defined and quantified.
- (ii) Replace "a major proportion" by "more than half".
- (iii) Replace "severe or critical" by "significant".
- (iv) New paragraph before paragraph 6: "Definition of product should not be subject to any device that would allow over-classification or selective definition of source such as price breaks".

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

Suggestion:

- (i) "A determination of threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which imports would cause serious injury must be clearly foreseen and imminent".

Paragraph 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]."

Suggestion:

- (i) Delete the word "customs" in "customs territory".

Paragraph 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."

Suggestions:

- (i) First sentence remains as it is. First phrase of second sentence remains intact. Next phrase would be replaced by the following idea: "A minimum requirement for a finding of serious injury would be that certain, specified factors (such as lost sales and reduced profits, for discussion purposes) must be demonstrated. These factors would be necessary but not sufficient for injury to be found". Last phrase (on causality) should be clarified as follows: "Factors other than increased imports, in particular the prevailing market conditions in the domestic industry, shall be taken into account in determining whether injury is caused by increased imports".
- (ii) Paragraph 9 bis Consideration could also be given to indicators of the existence of serious injury such as the following: significant idling of productive capacity (including plants closures and significant under-utilization of production capacity); significant unemployment across the domestic industry; a significant number of firms carrying out domestic production operations at a reduced level of profit; and, significant decline in the proportion of the domestic market supplied by domestic products as compared to imports of a like or directly competitive product.
- (iii) Wages, domestic prices, import and export prices should be deleted.
- (iv) Add to the list "overall economic situation and consumption".
- (v) Modification of last phrase starting with "but serious": "The determination of principal cause shall be based on an examination of the effect of imports on one hand and on the other hand, all other relevant factors which, individually or in combination, may be adversely affecting the domestic industry".

- (vi) Replace last phrase starting with "but serious" by:
"Furthermore, serious injury or threat thereof cannot be deemed to exist where factors such as technological change or changes in consumer preference or similar factors are instrumental in switches to like and/or directly competitive products made by the same domestic industry".
- (vii) Delete "Market share".
- (viii) Add "competitiveness" to the list of factors.

Paragraph 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."

Suggestions:

- (i) The tariff increase should "in no case exceed 30 per cent of the bound tariff".
- (ii) Delete "but may also take the form of quantitative restrictions".
- (iii) Delete the first sentence.
- (iv) Drop the second sentence.
- (v) Add to the end of the paragraph "In calculating the recent representative level, any period during which imports of the product concerned were insignificant should be excluded".
- (vi) The maximum tariff increase by 50 percentage points.
- (vii) "Safeguard measures shall be applied only to the extent as may be necessary to remedy or prevent serious injury and to facilitate adjustment. They should take the form of tariff increases, but may also take the form of quantitative restrictions. No quantitative restriction shall have the effect of reducing the quantity of imports below a recent representative level unless use of such a recent representative level would not prevent or remedy injury, nor shall any increase in tariff exceed that necessary to prevent or remedy injury and facilitate adjustment."

- (viii) Add wording to indicate "recent representative level" to mean imports of the last three years.
- (ix) Delete reference to structural adjustment.

Paragraph 11 "A safeguard measures 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."

Suggestions:

- (i) Rewrite paragraphs 11 and 12 as follows: "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. Initially, it shall be applied for a period of not more than three years. Exceptionally, a safeguard measure may be extended, provided it is demonstrated that the situation justifies it, adjustment has commenced during the initial period of application and the pertinent rules of Sections III and IV are observed".
- (ii) Delete reference to structural adjustment.
- (iii) Initial period limited to two years.
- (iv) Delete last sentence.
- (v) Merge paragraphs 11, 12, 13 and 19 as follows: "A safeguard measure shall not be applied for longer than necessary to remedy or prevent serious injury. A safeguard measure shall not exceed (x) year(s). It may be extended, but only once, for a period of (y) year(s) provided that: (i) it has been established by the competent national authorities that there is continuing serious injury; and, (ii) there is evidence that adjustment is taking place. A safeguard measure shall not be applied to the import of a product which has been subject to such a measure for a period equal to that during which such measure was applied.
- (vi) "A safeguard measure shall be applied only for the time as may be necessary to remedy or prevent serious injury or threat thereof. This period shall in no case exceed three years."

- (vii) Rewrite paragraphs 11, 12 and 13 as follows: "All safeguard measures shall be temporary. The initial period of any safeguard measure shall not exceed (x) years. Exceptionally a safeguard measure may be extended, provided it is demonstrated that the situation justifies it and that structural measures were in place. In no circumstances shall the total period of application of any safeguard measure exceed (y) years".

Paragraph 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."

Suggestions:

- (i) Delete the whole paragraph.
- (ii) Add "exceptionally" to the extension of the initial period.
- (iii) Drop the word "pertinent".
- (iv) The period of extension should not exceed six months.
- (v) "The three-year period mentioned in the previous paragraph may be extended only provided it is demonstrated that the situation justifies it, structural adjustment measures are taken and pertinent rules of Sections III and IV are observed. Such extension shall not exceed two years."

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

Suggestions:

- (i) Four years.
- (ii) Five years.
- (iii) Three years.
- (iv) Eight years.
- (v) Two and a half years.

Paragraph 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."

Suggestions:

- (i) "If the expected duration of any safeguard measure is over three years, it should be progressively liberalized during the period of application. As soon as feasible, the contracting party adopting such measure shall review the situation and, if possible, withdraw the measure or increase the pace of the liberalization."
- (ii) Make the method of degressivity operational by specifying that if the safeguard action is a tariff increase, then the tariff will be reduced by a specific percentage each year; and if it is a quantitative restriction, then the quotas should be increased each year by a specific percentage.
- (iii) The review should be mandatory. Delete "if possible" in the last sentence.
- (iv) The plan for the rollback should be announced at the outset.
- (v) The following sentence could be added at the end: "In the case of an extension, the safeguard measures must not be more restrictive than the last phase of the initial measure, and should continue to be degressive."
- (vi) The Committee may play a rôle in the exercise of progressive liberalization.

Paragraph 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."

Suggestions:

- (i) "After a safeguard measure and any permissible extension have been provided, safeguard measures on the affected product may not again be introduced for a period equal to the number of years for which the original measure and any extension was in effect."
- (ii) (z) years equals the period equal to the total number of years of application of safeguard measure plus a number to be agreed. The idea is to make it more difficult to use safeguard.

- (iii) "Before a safeguard measure may be reapplied to a product which has previously been subject to a safeguard measure within the importing contracting party concerned, a period of time must have elapsed which is no less than the total period of application of the earlier measure, provided that such a period is greater than 24 months."
- (iv) There must be provisions for short period of protection for seasonal products.
- (v) There should be a minimum period of one year for products of a seasonal character.

Section III: STRUCTURAL ADJUSTMENT

Suggestions:

- (i) Delete Section III.
- (ii) Absolutely necessary to maintain Section III.

Paragraph 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."

Suggestions:

- (i) Some reference to the relevant GATT articles must be made, such as "any structural adjustment assistance measures must be in conformity with the relevant GATT articles".
- (ii) Delete the phrase "in order to avoid the application of the latter".
- (iii) Substitute "safeguard measures" by "border measures".
- (iv) Delete this paragraph.
- (v) "In conjunction with a safeguard measure, a contracting party may adopt GATT-consistent adjustment assistance measures to facilitate adjustment measures taken by firms or workers. However, countries adversely affected by such adjustment assistance measures retain their rights provided under the General Agreement to respond."
- (vi) Replace "support" by "stimulate".

Paragraph 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."

Suggestions:

- (i) In order not to provide a blank cheque to subsidization, a reference to the obligation under the General Agreement is needed here.
- (ii) It is not acceptable to limit the possibility of providing assistance only if there is serious injury.
- (iii) Delete paragraph 17.

Paragraph 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."

Suggestions:

- (i) Delete paragraph 18.
- (ii) This transparency requirement should be more appropriate in Section IV.
- (iii) Transparency can only cover governmental measures and not private measures.

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

Suggestions:

- (i) Delete paragraph 19.
- (ii) This paragraph can be combined with paragraph 12.
- (iii) Paragraph 12 can be merged with 19 in the following manner:
"An initial period of application of a safeguard measure may be extended, provided that the authorities of the importing contracting party have demonstrated that the situation justifies it, and structural adjustment measures are being taken and pertinent rules of Sections III and IV are observed".

- (iv) "Evidence" can be clarified in order not to provide carte blanche to subsidization.

Section IV: NOTIFICATION AND CONSULTATION

Paragraph 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."

Suggestions:

- (i) Delete "and the reasons for it" in sub-paragraph (a).
- (ii) Add "import surveillance" to sub-paragraph (a).
- (iii) Sub-paragraph (a) should refer to more details concerning the determination of injury and the causal link of injury to imports. Other details like product description, etc. should also be provided.
- (iv) Sub-paragraphs (b) and (c) can be combined.

III. Other business

13. It was agreed that the next meeting of the Group should be held on 12, 13 and 15 March 1990, and that a further meeting should take place on 23, 24 and 26 April 1990, and another one during the week beginning 28 May 1990.