

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/W/25/Rev.2

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Special Distribution

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

CHAIRMAN'S REPORT ON STATUS OF
WORK IN THE NEGOTIATING GROUP

1. In response to the statement by the Chairman of the Trade Negotiations Committee at its last meeting that the GNG would be called upon to consider texts from all Negotiating Groups at its next meeting (paragraph 11 of MTN.TNC/14), I submit a draft text which, in my view, represents a profile of an agreement on safeguards.
2. In accordance with the Mid-Term Decision, negotiations in the Group are taking place on the basis of a draft by the Chairman. It is clearly understood, therefore, that the draft text is a Chairman's text indicating the general trend of discussion of the Negotiating Group. While some of the main doubts and divergences of opinion among participants are highlighted in square brackets, the remainder of the text is not necessarily accepted by all. Participants are therefore free to submit further proposals, suggestions and amendments to the draft. In fact, numerous informal proposals are still being examined in informal consultations. Participants have agreed to use the Chairman's draft text as a basis for the final phase of negotiations in the autumn of 1990.
3. It is recalled that the Punta del Este Declaration states that "a comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations".
4. The Chairman's draft text is attached.

SAFEGUARDS

Draft Text by the Chairman

PREAMBLE

The contracting parties

Having in mind the overall objective of the contracting parties to improve and strengthen the international trading system based on the General Agreement on Tariffs and Trade;

Recognizing the need to clarify and reinforce the disciplines of the General Agreement, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all contracting parties and based on the basic principles of the General Agreement, is called for;

Hereby agree as follows:

I

GENERAL

1. For the purposes of this Agreement^{*}, a safeguard measure shall be understood to mean a border measure entailing the suspension, in whole or in part, of obligations or the withdrawal or modification of concessions under the General Agreement, with respect to a product, that is found necessary under the conditions and procedures provided for below, to prevent or remedy serious injury to a domestic industry and to facilitate adjustment. Any trade-restrictive border measure taken in violation of the said conditions and procedures shall not be deemed to be a legitimate safeguard measure.

2. The provisions of paragraph 1 above do not prejudice the rights and obligations of contracting parties regarding trade-restrictive measures taken in conformity with specific provisions of the General Agreement other than Article XIX, protocols, and agreements and arrangements negotiated under the auspices of GATT.

II

CONDITIONS

3. A contracting party¹ may apply a safeguard measure only on the conditions that the importing contracting party has established, pursuant to the provisions set out in paragraphs 4 and 7 below, that a product is being imported into its territory in such increased quantities, actual or relative to domestic production, and under such conditions as to cause or threaten serious injury to the domestic industry that produces like or directly competitive products.

4. (a) A contracting party may apply a safeguard measure only following a public investigation by the competent authorities of the importing country pursuant to procedures previously established and made public in consonance with Article X of the General Agreement. This investigation shall include reasonable notice to all interested parties and public hearings or otherwise in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

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

¹For the purpose of this Agreement, the European Economic Community shall be considered as a contracting party.

- (b) Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without specific permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event such parties indicate that such information cannot be summarized, they shall provide the reasons why a summary cannot be provided.

5. Safeguard measures shall be applied to a product being imported irrespective of its source, [subject to the provisions of paragraphs 19 and 20 below].

[5. Safeguard measures shall be applied to imported products found to cause or threaten serious injury irrespective of their source. In exceptional circumstances, an importing country may apply a safeguard measure selectively against imports from a limited number of sources. Such exceptional circumstances exist only if the competent authorities in the importing country have determined that (1) serious injury was primarily due to a sharp and substantial increase from a limited number of countries, and (2) these imports account for a significant proportion of total imports. Selective measures shall not be applied to imports from suppliers that represent less than a minimum share (x%) of total imports.]

6. For the purposes of this Agreement:

- (a) serious injury shall be understood to mean a significant overall deterioration in the position of a domestic industry;
- (b) a domestic industry shall be understood to mean domestic producers operating within the territory of a contracting party whose collective output as a whole of the like or directly competitive products constitutes a major proportion of the total domestic production of those products; and
- (c) threat of serious injury shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraphs 7, 25 and 26 below.

- 7. (a) In the investigation to determine whether or not serious injury or threat thereof to a domestic industry exists under the terms of this Agreement, the competent authorities shall take into account all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

- (b) No serious injury or threat thereof shall be found to exist unless this investigation demonstrates, on the basis of objective evidence, that there is a causal link between increased imports of the product concerned and such injury or threat.
- (c) The competent authorities shall publish, in accordance with the provisions of paragraph 4 above, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

8. Safeguard measures shall be applied only to the extent as may be necessary to prevent or remedy 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 reduce the quantity of imports below the level of a recent representative period.

[8. Contracting parties shall apply safeguard measures only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Preference should be given to the application of tariff increases. When quantitative restrictions are applied, these shall not have the effect of reducing the total quantity of imports below the level of the most recent three years' average preceding the initiation of an investigation into injury for which data are available, provided that this is sufficient to remedy injury. In cases in which a quota is allocated among supplying countries, and in the absence of agreement with the suppliers concerned, the same rule shall apply, provided that any reduction in individual quota allotments necessary to remedy injury may not exceed (x) percentage points of the proportion supplied during the representative period. When a safeguard measure takes a form different to a quantitative restriction, the authorities of the importing contracting party shall examine all relevant factors (e.g. prices, price elasticity, market share) so as to seek to ensure that, to the extent feasible, the effect of the measure does not result in a cutback of imports to a level below the above representative period, provided this is sufficient to remedy injury. Whenever a safeguard measure has the effect of reducing imports at a level below the representative period, the importing contracting party shall provide justification as to the reasons why such a reduction is necessary to remedy injury.]

9. Safeguard measures shall be applied only for the time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. It shall not exceed a period of three years, unless this is extended under paragraph 10 below.

10. The period mentioned in paragraph 9 above may be extended, provided that it has been demonstrated by the competent authorities of the importing contracting party that serious injury or threat thereof is continuing, or that serious injury would recur if the measure were to be withdrawn, that there is evidence of adjustment, and that the pertinent rules of Sections IV and VII below are observed.

[10a. Safeguard measures limited to specific sources may not exceed a maximum duration of 36 months. If, at any time during the period of application of such measures, it appears that goods being imported from non-restrained suppliers are increasing significantly, a safeguard measure may be applied to all sources of imports. In cases in which the extension of safeguard measures is justified under the provisions of paragraph 10, a safeguard measure shall be made applicable to all sources of imports.]

11. The total period of application of a safeguard measure including any extension thereof shall not exceed six years.

12. In order to facilitate adjustment, if the expected duration of a safeguard measure as notified under the provisions of paragraph 26 is over one year, it shall be progressively liberalized during the period of application. The contracting party applying such a measure shall review the situation not later than the mid-term of the measure and, if possible, withdraw it or increase the pace of liberalization. A measure extended under paragraph 10 above shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

13. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period is at least one year.

III

ADJUSTMENT

14. Adjustment assistance measures taken by a contracting party in conjunction with a safeguard measure to support structural adjustment measures taken by firms or workers shall be consistent with the relevant provisions of the General Agreement.

15. Contracting parties undertake not to adopt laws, regulations, policies and practices that hinder the natural process of structural adjustment of public and private enterprises.

IV

LEVEL OF CONCESSIONS AND OTHER OBLIGATIONS

16. A contracting party proposing to apply a safeguard measure or seeking an extension shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing between it and the exporting contracting parties which would be affected by such a measure under the General Agreement, in accordance with the provisions of paragraphs 27 and 28 below.

17. If no agreement is reached within 30 days in the consultations under paragraphs 27 and 28 below, then the affected exporting contracting parties are free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application of substantially equivalent concessions or other obligations under the General Agreement, to the trade of the contracting party applying the safeguard measure.

18. The exercise of the right of suspension referred to in paragraph 17 above is not permitted if the duration of the measure is not to exceed [three years], provided such a measure conforms to this Agreement.

V

DEVELOPING COUNTRIES

[19. 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.]

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

[21. 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 which their individual development, financial or trade situation requires.]

VI

ELIMINATION OF CERTAIN MEASURES

22. Contracting parties agree to phase out, or bring into conformity with this Agreement, all trade-restrictive border measures referred to in paragraph 1 above, taken in violation of the conditions and procedures set out in this Agreement.

23. The provisions of paragraph 22 above shall be carried out according to a timetable to be agreed on by the Safeguards Committee not later than 180 days after the date of the entry into force of this Agreement. This timetable shall provide for all measures referred to in paragraph 22 above to be phased out or brought into conformity with this Agreement within a period of three years.

24. Contracting parties undertake to adopt reasonable measures to discourage public and private enterprises from maintaining or adopting non-governmental measures equivalent to those referred to in paragraph 22 above.

VII

NOTIFICATION AND CONSULTATION

25. A contracting party shall immediately notify the CONTRACTING PARTIES when:

- (a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
- (b) making a finding of serious injury or threat thereof caused by increased imports; and
- (c) taking a decision to apply or extend a safeguard measure.

26. In making the notifications referred to in sub-paragraphs 25(b) and (c) above, the contracting party proposing to apply or extend a safeguard measure shall provide the CONTRACTING PARTIES with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved, nature of the proposed measure, proposed date of implementation, expected duration and timetable for phasing out such a measure. In the case of an extension of a measure, evidence of adjustment shall also be provided. The CONTRACTING PARTIES or the Safeguards Committee may request such additional information as they may consider necessary from the contracting party proposing to apply or extend the measure.

27. A contracting party proposing to apply a safeguard measure shall provide adequate opportunity for prior consultations with those exporting contracting parties which would be affected by such a measure, with a view, inter alia, to reviewing the information provided under paragraph 26 above, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 16 above.

28. The provisions of paragraph 27 above shall also apply to cases of extension under paragraph 10 above, in which case the consultations shall be initiated well in advance of the expiry of the safeguard measure.

29. In critical circumstances where delay would cause damage which it would be difficult to repair, a provisional safeguard measure may be taken pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. However, the pertinent requirements of this Section and Section II shall be met within 90 days after the provisional measure has been taken. The duration of the provisional measure shall not exceed 180 days.

30. The results of the consultations and negotiations referred to in this Section and in Section IV, as well as the results of mid-term reviews referred to in paragraph 12 and suspensions of concessions and other obligations referred to in paragraph 17, shall be notified immediately to the CONTRACTING PARTIES by the contracting parties concerned.

31. Adjustment assistance measures taken by contracting parties under paragraph 14 in conjunction with safeguard measures shall be notified to the CONTRACTING PARTIES.

32. Contracting parties shall notify the CONTRACTING PARTIES of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

33. Contracting parties shall notify the CONTRACTING PARTIES, not later than 60 days after the entry into force of this Agreement, of all the measures described in Section I above which exist at the date on which this Agreement enters into force.

34. Any contracting party may notify the CONTRACTING PARTIES of all laws, regulations, administrative procedures and any measure or action dealt with in this Agreement that has not been notified by other contracting parties that are required by this Agreement to make such notifications.

35. Any contracting party may notify the CONTRACTING PARTIES of any non-governmental measures referred to in paragraph 24 above.

36. All notifications to the CONTRACTING PARTIES referred to in this Agreement shall normally be made through the Safeguards Committee.

37. The provisions on notification in this Agreement shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to legitimate commercial interests of particular enterprises, public or private.

VIII

SURVEILLANCE

38. There shall be a Safeguards Committee under the authority of the CONTRACTING PARTIES, which shall be open to the participation of any contracting party indicating its wish to serve on it. The Committee will have the following functions:

- (a) to monitor, and report annually to the CONTRACTING PARTIES on, the general implementation of this Agreement and to make recommendations towards its improvement;

- (b) to find, upon request of an affected contracting party, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the CONTRACTING PARTIES;
- (c) to assist contracting parties, as appropriate, in their consultations under the provisions of this Agreement;
- (d) to monitor the phase-out of certain measures within an agreed timetable as provided for in Section VI, and report as appropriate to the CONTRACTING PARTIES;
- (e) to receive and review all notifications required by this Agreement and report as appropriate to the CONTRACTING PARTIES; and
- (f) to perform any other function connected with this Agreement that the CONTRACTING PARTIES may determine.

IX

DISPUTE SETTLEMENT

39. 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.