MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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OUTLINE STATEMENT BY THE REPRESENTATIVE OF THE EUROPEAN COMMUNITIES IN THE NEGOTIATING GROUP ON SAFEGUARDS

As far as selectivity is concerned, I fear that we may have fallen under the sway of false arrangements. Since the Director-General of GATT has called on us to be logical, let us try to put some order into our thinking.

I. First false argument: The Community is insisting on selectivity; selectivity is contrary to GATT; and therefore it is impossible to accede to the Community's demand without undermining the General Agreement.

How often must it be repeated that the Community's goal is not selectivity? Even so, there are those who have feared in the past (and continue to fear or pretend to fear) that we are calling for an interpretation of Article XIX that would allow us to apply it selectively on any occasion. No, that is not what the Community wants.

No, we propose something else, which I would define as a limited specific option that is neither arbitrary nor discriminatory, based on an injury finding and in any event subject to multilateral supervision.

How would that weaken GATT?

The principle of non-discrimination is the keystone of GATT; for it is this principle of non-discrimination which is the real bulwark of multilateralism. However, this principle must not be applied blindly or mechanically, but rather intelligently. Is there any need to recall that the MFN clause provides for exceptions? There are many of them, including those in Article I of the General Agreement, and furthermore they continue to benefit some of those who are amongst the most intransigent critics of our position.

This principle is to be found in the preamble of the General Agreement, and is applied not only in Article I but in Articles XIII, XVII and, lastly, XX.

It is a recognized, unchallenged principle. From this standpoint, the Community undertakes formally not to use the option it is proposing in such a way as to create a means of arbitrary discrimination.

II. Second false argument:

The need for the selective option arises from fear of retaliation;
we should eliminate recourse to retaliation;
then there will no longer be any need for a selective option.

The reality is much more complex than that, and in any event much more subtle. The proliferation of grey-area measures does not stem only from fear of reprisals. Admittedly, this is a concern that has sometimes had an effect. But in almost all cases, once parties have become fully aware of the circumstances, what has prevailed is a responsible, reasonable, carefully considered attitude.

I am referring to the awareness which has evidently come home on several occasions to those responsible for trade policy in certain countries - whose high level of commitments under the GATT (for example, due to the number of bindings in their tariff) obliged them more than other countries to take action within the narrow framework of safeguards when they felt the need to undertake defensive trade action - that by strictly following the accepted interpretation of Article XIX they would, as often as not, have to use a sledge-hammer as a fly-swat.

The awareness was already there. It seemed dangerous and likely to cause an unnecessary deterioration in trade relations to act against all trading partners when the injury suffered was attributable to one or a few specific sources. Again, not only because the inevitable retaliation would have further compounded the deterioration stemming from the safeguard action, but rather for two reasons:

1. firstly, in comparison with the objective to be attained, such action was disproportionate and exaggerated and hence ill-advised and in any case ill-understood;

2. and secondly, because in the long run acting in this way would inevitably be disastrous for the trading community as a whole, in so far as other countries would have used the same sledge-hammer to kill similar flies. Ultimately, everyone would lose if Article XIX was applied in a formalistic manner.

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Naturally, once the flood-gates were opened it became difficult to curb the escalation of excesses. That is the danger inherent in rules that were once realistic but have become inapplicable today. It is short-sighted to try to ignore the fact that a provision is no longer applicable and to insist on preserving dogma: the hard facts of non-applicability must be faced.

III. What conclusions should we draw from all this?

1. There are many kinds of grey-area measures, ranging from voluntary export restraints to discriminatory import régimes, by way of orderly marketing arrangements and many other schemes. However, they all share one common feature: supposedly concluded by direct mutual agreement, they are totally outside GATT's control.

In other words, as a result of the existence of grey-area measures a large proportion of international trade falls outside the Agreement whose essential purpose is to govern the conditions in which such trade takes place.

2. To decry what is seen as an unacceptable situation is only a first step. Effective means of remedying it remain to be found, and the utmost care must be taken in choosing such means. When dealing with economic realities, such as the proliferation of grey-area matters, it is above all important to beware of taking a Manichaean view. Just as in the past the prohibition of alcohol proved useless as a means of curbing alcoholism, an agreement that went no further than prohibiting grey-area measures would be doomed to failure. For where there is an economic reality, there is also a need. And that need must be catered for by bringing it within the framework of multilateral disciplines.

In the end, why do GATT contracting parties resort to grey-area measures? Tot capitae, tot sententiae: there are as many opinions as there are participants.

The Community considers that the basic reason Article XIX has not been systematically applied by the major trading countries is that it is not adapted to the real needs that are felt in a safeguards situation. Sometimes it is only the imports from a small number of sources that are causing or threatening to cause injury. Should action then be taken against all suppliers, when it would suffice to take corrective measures against only a few? Should consultations taking up a lot of time and effort be held with many countries when possibly only one country may be concerned?

This is the analysis underpinning the Community's proposal for a comprehensive safeguards régime that includes a specific non-discriminatory option.

Is the Community thereby seeking simply to "legalize" grey-area measures? No, for the specific safeguards régime it proposes differs from the grey-area measures in one important way: safeguards would not only be governed by the GATT but furthermore would be subject to multilateral supervision.

These rules would concern, first of all, the conditions in which selective safeguards could be imposed. This is an essential factor, as it protects exporting countries from the arbitrariness characteristic of grey-area measures. Strict compliance with the injury principle is thus

seen as the keystone of a system of guarantees. Compliance with the injury principle, logically applied, makes restrictive measures much more predictable.

Then, more difficult conditions of application, a short maximum period of application, thoroughgoing supervision by the Safeguards Committee and the continuing possibility of retaliation - all these being conditions that remain to be negotiated at this stage - would all ultimately serve only to penalize recourse to safeguards. As a response to exceptional situations, such action must also remain specific and limited both in scope and in time.

3. The approach proposed by the Community is the only one that meets the various objectives pursued by the partners in the negotiations: to have effective temporary protection against imports that cause injury, on the one hand, while avoiding arbitrariness on the other.

Seen in this way, the safeguards régime proposed by the Community does not in any way undermine the foundations of the General Agreement. On the contrary, it would be a decisive contribution to the strengthening of GATT control over measures taken by its contracting parties, including the most important of them. Thus, the régime proposed by the Community would genuinely contribute to strengthening the multilateral trading system.

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What are we actually proposing?

(a) Firstly, that contracting parties should progressively renounce all existing grey-area measures as well as any new measure contrary to the Safeguards Agreement in future: in other words, a return to conformity with the GATT.

(b) Secondly, a comprehensive agreement on safeguards that would enable us to learn from past mistakes and so avoid any future bending of the rules and the ensuing abuses. It would provide for a general safeguards mechanism of which the measures would be applicable erga omnes, with a specific, limited option that would be neither arbitrary nor discriminatory and would be based on an objective assessment of injury.