

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/19  
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Trade Negotiations Committee  
Negotiating Group on Safeguards

MEETING OF 11 AND 14 SEPTEMBER 1990

Note by the Secretariat

1. The Negotiating Group met on 11 and 14 September 1990 under the Chairmanship of Ambassador G. Maciel of Brazil.

A. General statements

2. The representative of Thailand referred to a communication submitted by her delegation to the Negotiating Group on Agriculture, circulated as document MTN.GNG/NG5/W/199, which contained a proposal on special agricultural safeguard rules. This proposal was contingent upon the view that, at the end of the transitional period, strengthened GATT rules and disciplines would bring about liberalization in the agricultural trading system. In complying with liberalizing obligations, governments might need flexibility in invoking safeguard measures with respect to agricultural products. However, disciplines on the application of the measures must be tightened to prevent abusive use of safeguard provisions. Their main concern was two-fold. Firstly, in a situation where the agro-industrial producers shifted the adverse effect to farmers due to an unforeseen development of an increase in imports of a processed product, safeguard measures could not be invoked to prevent injury to farmers. In the traditional sense of the provision, safeguard measures must be applied against processed products. The problem was how could one find evidence of injury to the agro-industry. Secondly, in the case involving agricultural products as consumer goods, an injury test which required the demonstration of overall deterioration of the industry would not be effective in coping with the injury to small farmers. By the time the overall deterioration could be established, serious damage would have already been felt by these farmers. In order to deal with these two concerns effectively, certain elements should be incorporated in a safeguard system. These included: (a) the disciplines regarding the application of safeguard measures must be tightened and the maximum time-limit for the application of safeguard measures should be specified; (b) increase in imports should be favoured as a ground for the application of safeguard measures; (c) in the case of agricultural products used as inputs of an agro-industry, the reduction of farm-gate prices of the product while output was constant in relative terms, should constitute a ground for the invocation of safeguard provisions for the processed products; and (d) reduction in farm-gate

prices of an agricultural product should be sufficient to prove injury to farmers in the case where there was no structural surplus and the revenue from the sale of the product was the main source of income of the average farm household affected by increased imports.

3. The spokesman for the European Communities circulated a statement (in document MTN.GNG/NG9/W/30), and said that it was made in response to a challenge issued by the Chairman of the TNC at its meeting in July 1990, asking delegations which had proposed a selective application of safeguard measures to prove that this would strengthen the GATT system, and to spell out the exceptional circumstances which would justify a selective application. The challenge also suggested that any contracting party which considered itself directly or indirectly affected by the "grey-area" measures should examine the measures to see if they were in line with the GATT rules and procedures (MTN.TNC/16, paragraph 62). He said that the GATT had for about 15 years tried to negotiate an agreement on safeguards. This was because the provisions of Article XIX had become more and more awkward, in fact quite impossible. After the failure of the Tokyo Round of negotiations to reach agreement on safeguards, it had been confirmed that there was indeed a "grey-area". Some progress had been made between the Tokyo Round and the Uruguay Round by way of a better understanding of the dimension of this "grey-area", and the secretariat had assumed a certain risk by issuing a list of such measures which nobody liked but which nobody contested. Very often, press articles and academic studies attacked the GATT by saying that it controlled only a very small portion of international trade while the rest of it continued to operate in the "grey-area". A true strengthening of GATT therefore would be to stop this kind of development. If, in Brussels, contracting parties were able to say that they were able to finally master the "grey-area" and agreed to eliminate it, that would be a real success of GATT. However, the "grey-area" must not be replaced by the "black-area" nor by a consolidation of unilateral actions. A second way of tackling the "grey-area" would be to recognize that the m.f.n. clause was inflexible and unrealistic, and to adapt to the realities of life. A third idea was contained in the written document circulated by the European Communities. This idea had abandoned pure and simple selectivity as an alternative to the m.f.n. clause. It tried to find a specific application, limited in space and time, under exceptional circumstances to be defined, which would not give rise to arbitrary or unjustified discrimination among countries where similar conditions prevailed. It was therefore absolutely wrong to say that the Communities still wanted strict selectivity. This was history. If the Communities' approach were not to be accepted and the negotiations on safeguards led to failure, then there would be no strengthening of the multilateral trading system. An unrealistic agreement would simply sow the seeds of a future disaster. A joint solution to put an end to the escalation of the grey-area must be found. This was part of a response to the question raised by the Director-General of GATT. The importance of the European Communities in international trade should not be forgotten. Even without any agreement on safeguards, the Community would be able to make use of specific safeguard mechanisms in its trade with a number of

countries like the ACP countries, the Mediterranean region and the EFTA, which covered about 60 per cent of its total trade. This showed clearly that the Communities could live without a safeguard system. Nevertheless the Community wanted to strengthen this system and was convinced that the Negotiating Group was condemned to come to an agreement through negotiations.

4. One representative said that the most-favoured-nation treatment provision in Article I was the very essence of the GATT. Safeguard measures were taken in situations of fair trade, unlike measures taken in unfair trade situations such as anti-dumping action where selectivity was appropriate. The objection to selectivity was based not only on grounds of principle but also on pragmatic grounds. It was the economically and politically weaker parties who needed the protection of the m.f.n. clause and of an m.f.n.-based agreement, because they were targets of selective actions. Selectivity simply did not work. It would lead to diversion of trade, and thus the continuation and prolongation of any safeguard action. Moreover, it was unthinkable to return the MFA to the GATT without a non-selective application of Article XIX. It was true that the "grey-area" was a key issue in the negotiations. But problems of the "grey-area" should not be solved by destroying the very basis of contracting parties' faith in the GATT. Several delegations shared the above views and reaffirmed their commitment to an agreement based on the m.f.n. principle and their opposition to any form of selectivity in the application of safeguards. One delegation added that bending the existing rules to accommodate the so-called "realities" or forces seeking protection would not be conducive to the maintenance of orderly international relations.

5. One delegation said that the demands of developing countries in the safeguards negotiations were not unrealistic nor exaggerated but were absolutely justified. It was important that the GATT took into consideration the conditions of all contracting parties, large or small.

6. One representative remarked that the spokesman for the European Communities had erroneously ascribed the stalemate in the safeguards negotiations to a failure on the part of those who were in favour of m.f.n. to accept a weakening of that principle. The stalemate, in his view, was caused by exactly the opposite phenomenon, i.e. an attempt to weaken the most-favoured-nation principle and divert the attention of the negotiations from defining an Article XIX discipline consistent with Article I of the GATT and more amenable to use than the existing Article XIX provisions. He was not convinced that the European Communities needed selectivity or believed in it any longer. Selective application of safeguards would not be in the interest of economically weaker countries as they could be picked off no matter how the exceptional circumstances were stipulated. Failure in the current safeguards negotiations would be a fundamental set back to the Uruguay Round. Unfortunately, it was precisely the European Communities' determination to insist on a selective approach that would most likely lead to such a set back.

7. One delegation said that the twin pillars of Article XIX, namely the m.f.n. principle and the concept of automatic retaliation had made the application of Article XIX provisions increasingly difficult, leading to a proliferation of "grey-area" measures over the past 15-20 years. The main objective of the safeguards negotiations was to bring to an end the use of "grey-area" measures, and the Group had been discussing ways of creating disincentives for this purpose. It would be equally important to examine whether incentives could be created to make countries act according to the rules and also to show them that the rules would be effective in dealing with problems that could arise. Negotiators could not simply declare that "grey-area" measures were illegal and assume that the trading community would forever forego their use. What was required was an effective safeguard agreement, be it with or without provisions for selective application. It was necessary that the Group examined all the possibilities that existed for creating a safeguard system that would prevent its abuse, but which was available to importing countries when serious problems did occur.

B. Draft text of a comprehensive agreement (MTN.GNG/NG9/W/25/Rev.2)

8. The Chairman said that the main purpose of the meeting was to continue the discussion on the revision of his draft text of a comprehensive agreement (MTN.GNG/NG9/W/25/Rev.2) which he had submitted to the GNG in July as a "profile" of an agreement on safeguards. In making the submission he had made it clear that no delegation was committed to that paper apart from the fact that participants had agreed that it was a good basis for the final phase of negotiations. It was understood that participants were free to submit further proposals, suggestions and amendments to the draft. As a matter of fact, some informal proposals were still not addressed in the informal consultations. It was his intention, therefore, to immediately reinstitute informal consultations on the draft.

9. On 14 September 1990, the Chairman resumed the formal meeting and reported to the Group on the progress made in the informal consultations during the past few days. He recalled the Chairman's summing-up at the TNC meeting of 23-26 July (MTN.TNC/16, paragraph 77) which stated that negotiations would enter their final phase on 8 October 1990 and that the chairmen of the negotiating groups had been requested to submit, by that date, their assessments of the situation in their respective groups, in particular the major questions which still needed to be settled. He said that he would conduct informal consultations immediately after this meeting with a view to circulating another revision of the text at the end of the week. He intended to hold further informal consultations on 1-3 October and a meeting of the Negotiating Group on 3 October 1990 aiming to produce a text, which participants accepted as the best available basis for their negotiations in the final phase, to be forwarded to the Chairman of the TNC. He further recalled that the Chairman of the TNC had stressed that each group must use the time up to the first week of October to resolve the outstanding issues and said that, in practical terms, this meant keeping the number of square brackets in the text to a minimum. It seemed

inevitable, however, that some major differences would remain on issues such as selectivity, the "grey-area", duration of measures, and adjustment assistance measures. These points would be clearly identified in the text that would be forwarded to the TNC. It was necessary that the Group worked hard to resolve more minor issues in the period between now and 3 October.

C. Other business: Date of next meeting

10. It was agreed that the next meeting of the Group should begin on 3 October 1990 at 5 p.m.