

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/W/31
31 October 1990

Special Distribution

Original: English

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

ADDITIONAL UNITED STATES' PROPOSALS ON SAFEGUARDS

The United States proposes the following revisions to the safeguards text (MTN.GNG/NG9/W/25/Rev.3):

Paragraph 4: Although the current language is acceptable to the US delegation, we suggest that the Group continue to consider the following formulation:

"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. Within 90 days of applying such a provisional measure the pertinent requirements of paragraphs 3, 4 and 7 must be met. If increased imports are found to be causing or are threatening to cause serious injury, the provisional measure may remain in place for an additional maximum period of 120 days, during which time the other pertinent provisions of this Section and Section VIII shall be met. The duration of any such provisional measure shall count toward the initial period and any extension referred to in paragraphs 9, 10 and 11 below."

Paragraph 5: The United States remains interested in finding a solution to the issues raised by this matter, particularly if an acceptable solution is not developed on certain other issues. One compromise in which we remain interested would be a requirement that any selective action be consensual. Thus, we suggest that the second sentence of the paragraph read:

"In exceptional circumstances, an importing country may apply a safeguard measure selectively against imports from a limited number of sources only if these countries agree to such a measure."

Paragraph 8: The United States remains strongly opposed to the inclusion of adjustment assistance measures as a form of safeguard remedy. Thus we propose its deletion from this paragraph. We support in principle a preference for tariffs over quantitative restrictions, but cannot agree to this notion while negotiations in the Balance-of-Payments area over this same point and other points remained blocked. Finally, differences remain on the question of allocating quotas. There may be instances where an exact mathematical allocation may be inappropriate. However, there should be strong constraints against abuse. As a compromise, we offer the following language, as underscored below:

"Safeguard measures should be applied only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. They shall only take the form of tariff increases or quantitative restrictions, or both. No quantitative restriction shall reduce the quantity of imports below the level of a recent representative period which shall normally be the average of imports in the last three representative years for which statistics are available. In cases in which a quota is allocated among supplying countries, and in the absence of agreement with the suppliers concerned, the importing contracting party may allot quota shares proportionately to the quantities supplied during the previous representative period, subject to the possibility of taking into account clear evidence on the extent to which each supplier has contributed to the assessed global injury. No modification in any supplier's allocation shall exceed (x) percentage points of the proportion supplied during the representative period, and in no case may the allocation alter the relative positions of suppliers in the market of the importing country based on the last three representative years for which statistics are available. Whenever any such modification occurs, the importing contracting party shall provide justification as to the reasons why such a modification is necessary."

Paragraph 13: We accept that there should be a two-year minimum waiting period before a safeguard measure on the same product can be introduced. However, our acceptance of a longer waiting period for measures lasting longer than two years is contingent upon achieving our objectives in paragraphs 9 and 11. A maximum duration of eight years and the provisions of this paragraph go hand in hand.

On a more technical matter, paragraph 13 needs to be reconfigured to clarify that this provision does not apply to safeguard measures taken before the entry into force of this agreement. The paragraph should read:

"No safeguard measure shall be applied again to the import of a product which has been subject to a safeguard measure taken after the date of entry into force of this agreement for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years."

Section III: We propose that this Section be deleted. As a compromise, we would be willing to accept the following language in paragraph 15, as proposed by Canada:

"The application of such measures is without prejudice to the rights and obligations of contracting parties under the General Agreement, protocols and agreements or arrangements concluded within the framework of the General Agreement."

Section V: Our willingness to consider any form of special and differential treatment is linked to the initiation of negotiations on Balance-of-Payments.

Paragraph 24: We continue to question the current formulation, in that it could allow a country to justify as legitimate a measure that is consistent with any aspect of any GATT Article or agreement, even if the measure patently violates another provision of the General Agreement, including the safeguards agreement. Revise as follows:

"No measure that is otherwise inconsistent with the concessions or obligations of the General Agreement and that operates to safeguard a domestic industry shall be sought or taken by a contracting party unless the measure conforms with the provisions of Article XIX as interpreted by the provisions of this agreement, or falls within an exception under other provisions of the General Agreement or of any protocol, agreement or arrangement concluded within the framework of the General Agreement to which the contracting party is a signatory. These include actions taken by a single contracting party, as well as actions under agreements, arrangements and understandings entered into by two or more contracting parties. Any such measures in effect at the time of entry into force of this agreement shall either be brought into conformity with such provisions or phased out."