

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

SAFEGUARDS: STRICTER DISCIPLINES APPLICABLE TO THE
LIMITED SELECTIVE OPTION.

1. It is worth emphasizing that the Community is not proposing "Selectivity" as an alternative to m.f.n. Safeguards. The EC supports the conclusion of an m.f.n.-based Safeguards Agreement, within which the selective option would play a limited but essential role: The reality of the "grey area" is that it is selective in nature and is not subject to any formal tests or disciplines, there is rarely any time-limit nor compensation or retaliation; neither is it transparent nor subject to multilateral surveillance. The limited selective option - LSO - (within an m.f.n.-based safeguards system) is designed to provide, in exceptional circumstances, for safeguard measures under strict disciplines where the risk otherwise would be for importing countries to resort to the "grey area". In this way a commitment to eliminate "grey area" becomes a reality and the credibility and enforcement of such a commitment would be greatly increased. This would allow governments to effectively counter pressures for the conclusion of grey area measures.

All the general disciplines applicable to Safeguards would apply, mutatis mutandis, to the LSO. A great deal of progress has been made in this respect: the Safeguards Draft already contains a number of uncontested issues of cardinal importance for a multilateral Safeguard regime. The general disciplines would already imply a strict multilateral framework for Safeguard action:

- (a) A reinforced "injury test" (Paragraphs 3, 4, 6, 7);
- (b) Limits on the level of restrictions (Paragraph 8);
- (c) Temporary nature and degressivity (Paragraphs 9 to 14);
- (d) Notification, Consultations, Surveillance, Dispute Settlement (Section VIII to X).

The above disciplines have been particularly lacking in the case of "grey area measures". Moreover, what is currently reflected in the Safeguards Draft on these issues, represents a significant tightening of the conditions for Article XIX action.

2. A LSO should only be applicable: (a) in exceptional circumstances; (b) under stricter multilateral disciplines. These two conditions, when combined, would guarantee that selectivity remains strictly circumscribed to those cases in which it responds to a real economic need and that any opportunity for abuse is firmly discarded. These conditions are defined in bracketed 5 and 10a of the Safeguards Draft. This non-paper indicates a number of areas where further developments of refinements could be introduced in order to have a LSO acceptable for all participants.

(a) "Exceptional circumstances" justifying the recourse to Selective Safeguards

The EC accepts that selective safeguards measures should not result in arbitrary discrimination among Contracting Parties. It is for this reason that a close link has been established between the decision to apply a selective safeguard and the injury test. Thus a selective safeguard would be applied vis-a-vis those countries, without any scope for arbitrarily "picking up" suppliers, which have contributed primarily to the serious injury. Two parameters are proposed for defining these exceptional circumstances:

- (i) A limited number of countries is at the origin of a sharp and substantial increase of imports.
- (ii) Such imports account for a significant proportion of total imports.

These conditions could be more precisely circumscribed, while bearing in mind that such measures should not be defined in such rigid terms as to divorce them from economic realities. In this respect:

- The concept of "limited number of suppliers" could be further clarified. thus, agreement could be reached on the maximum number of suppliers that are at the origin of the "sharp and substantial" increase of imports. This would imply that in those cases in which there is a more generalized increase of imports from a larger number of sources, only the general remedy would be available.
- It would be possible to seek to define the concept of "significant proportion of total imports" in terms of an agreed percentage. Moreover, a figure should be agreed which excludes the application of the LSO to suppliers which have a minimum share of the market.

Through such guarantees exporting countries would have all necessary protections against: (a) the risk that suppliers affected by selective measures are chosen on the basis of non-objective factors; (b) the risk that recourse to LSO is available in cases where a m.f.n. remedy would be more justified in economic terms.

(b) Stricter Disciplines applicable to LSO

In addition to the general disciplines evoked above, the EC has proposed stricter disciplines on three areas:

- (i) Time-limits: Selectivity should only be allowed as a short-term remedy, so as to minimize any risk of trade-deflection. A maximum duration of three years for the LSO has been suggested. The desirability of a shorter duration can, however, be examined.

Paragraph 10(a) of the Safeguards Draft already envisages that a Selective Safeguard may have to be applied to all suppliers if imports from non-restrained suppliers significantly increase during the period of application. Although the risks of trade deflection are rather low in the case of a short term Safeguard, two additional guarantees can be added: (a) If so requested by the Safeguard Committee, the importing country would have to introduce surveillance of non-restrained suppliers and the data about the evolution of imports from such sources would be made available multilaterally. (b) The Safeguards Committee may, at any time, review a selective measure and determine that the special conditions justifying selective action are no longer applicable. (e.g. significant increase of exports from non-restrained suppliers).

- (ii) Retaliation: The argument is often made that the combination of limits on retaliation and selectivity entails a high risk for exporting countries. The Community fully agrees with such an assessment. It is for this reason that, if limits on retaliation for short-term safeguards were accepted, we propose that such limits should not apply in the case of selective measures.

In addition to the deterrence value of retaliation, fully preserving such rights would put the exporting country in a better position to negotiate compensation. An additional guarantee could be introduced: in order to reduce the impact of the restriction on the trade of the exporting

country the importing country should offer the restrained suppliers an opportunity to administer the restrictions, subject to surveillance by the authorities of the importing country.

- (iii) The requirements of section VIII to X already imply full transparency for selective safeguards. In view of the importance of ensuring a fair application of the criteria for the LSO, it would be possible to envisage in such cases an additional function for the Safeguards Committee. At the request of an affected exporting country, the Safeguards Committee could review the decision by the importing country to apply a Selective Safeguard. Such review would examine whether the importing country has properly established the special conditions justifying the recourse to Selective Safeguards. In case of a negative finding, the importing country would have to either terminate the action or make it applicable to all suppliers. Such reviews could be conducted not only upon the introduction of a safeguard measure, but also at any time during its application: e.g. to verify if, as a result of an increase of exports from non-restrained suppliers, a selective measure is no longer justified.