

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/RM/W/3

6 June 1991

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Rule Making and
Trade-Related Investment Measures

SAFEGUARDS

Note by the Secretariat

The draft text of an agreement on safeguards drawn up prior to the Ministerial Meeting of the TNC held in Brussels from 3 to 7 December 1990, is contained on pages 183 to 192 of MTN.TNC/W/35/Rev.1. As explained in the commentary to that text, reproduced on page 182 of the document, an overall compromise remained to be found on a number of issues reflected by square brackets in the text of the draft agreement.

Consultations held in Brussels have led to a compromise on some of these issues. The revised text, attached hereto, was circulated to participants in the Green Room meeting chaired by Minister Crosbie of Canada, but was not discussed.

Outstanding issues contained in the latest draft text are reflected by square brackets.

AGREEMENT ON SAFEGUARDS

The attached text is drawn up on the understanding that no paragraph is agreed unless all paragraphs in it are agreed and on the assumption that there is a satisfactory outcome in other areas of the negotiations.

AGREEMENT ON SAFEGUARDS

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 the need to enhance rather than limit competition in international markets; 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. This agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of the General Agreement.

II

CONDITIONS

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

3. (a) A contracting party may apply a safeguard measure only following an investigation by the competent authorities of the importing contracting party pursuant to procedures previously established and made public in consonance with Article X of the General Agreement. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means 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, inter alia, 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.

¹A customs union may apply a safeguard measure as a single unit or on behalf of a member state. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member state, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member state and the measure shall be limited to that member state. Nothing in this agreement prejudices the interpretation of the relationship between Article XIX and Article XXIV:8 of the General Agreement.

- (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 permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof and, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

4. 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. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of this Section and Section VII shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 7 below does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall count towards the initial period and any extension referred to in paragraphs 10, 11 and 12 below.

5. Safeguard measures shall be applied to a product being imported irrespective of its source.

6. For the purposes of this agreement:

- (a) serious injury shall be understood to mean a significant overall impairment in the position of a domestic industry;
- (b) in determining injury, a domestic industry shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a contracting party, or those whose collective output of the like or directly competitive products constitutes a major proportion [, i.e. normally 50 per cent or more but in no case less than 33 per cent,] 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 paragraph 7 below. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.
7. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this agreement, the competent authorities shall evaluate 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) The determination referred to in sub-paragraph 7(a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.
- (c) The competent authorities shall publish promptly, in accordance with the provisions of paragraph 3 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. Contracting parties should choose measures most suitable for the achievement of these objectives.
9. [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 each supplier has contributed to the assessed global injury, provided that any modification in individual quota allotments necessary to remedy injury may not exceed five percentage points or 30 per cent of the proportion supplied during the representative period, whichever is the smaller. No such modification shall be applied to contracting parties whose market share of the product concerned does not exceed one per cent. Whenever any such modification occurs, the importing contracting party shall provide justification as to the reasons for it.]

10. Safeguard measures shall be applied only for a period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. It shall not exceed four years, unless this is extended under paragraph 11 below.

11. The period mentioned in paragraph 10 above may be extended provided that the competent authorities of the importing contracting party have determined, in conformity with the procedures set out in this Section, that: the safeguard measure continues to be necessary to prevent or remedy serious injury; that there is evidence that the industry is adjusting; and that the pertinent provisions of Sections III and VII below are observed.

12. The total period of a safeguard measure including the period of application of any provisional measure, the period of initial application, and any extension thereof shall not exceed eight years.

13. In order to facilitate adjustment, if the expected duration of a safeguard measure as notified under the provisions of paragraph 25 is over one year, it shall be progressively liberalized at regular intervals during the period of application. If the duration of the measure exceeds three years, the contracting party applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, 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.

14. No safeguard measure shall be applied again to the import of a product which has been subject to such a 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.

15. Notwithstanding the provisions of paragraph 14 above, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

- (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
- (b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

III

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 paragraph 27 below. To achieve this objective, the contracting parties concerned may agree on any means of trade compensation for the adverse effects of the measure on their trade.

17. If no agreement is reached within 30 days in the consultations under paragraph 27 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, the suspension of which the CONTRACTING PARTIES do not disapprove.

18. The right of suspension referred to in paragraph 17 above shall not be exercised if the duration of the measure does not exceed three years, provided such a measure conforms to this agreement.

IV

DEVELOPING COUNTRIES

[19. Safeguard measures shall not be applied against a product originating in a less-developed contracting party whose market share in the product concerned does not exceed one per cent.]

20. Less-developed and least-developed contracting parties shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 12 above. Notwithstanding the provisions of paragraph 14 above, less-developed and least-developed contracting parties shall apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of this agreement, for a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

V

EXISTING ARTICLE XIX MEASURES

21. Contracting parties shall terminate all existing safeguard measures taken pursuant to Article XIX of the General Agreement not later than eight years after the date on which they were first applied or [five] [six] years after the date of entry into force of this agreement, whichever comes later.

VI

PROHIBITION AND ELIMINATION OF CERTAIN MEASURES

22. No trade-restrictive measure shall be sought or taken by a contracting party unless it conforms with the provisions of Article XIX as interpreted by the provisions of this agreement, or is consistent with other provisions of the General Agreement, or protocols and agreements or arrangements concluded within the framework of the General Agreement. 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 measure in effect at the time of entry into force of this agreement shall either be brought into conformity with the provisions of Article XIX and this agreement or phased out in accordance with paragraph 23 below.

23. The provisions of paragraph 22 above shall be carried out according to timetables to be presented to the Safeguards Committee by the contracting parties concerned not later than 180 days after the date of entry into force of this agreement. These timetables 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 not exceeding [three] [four] years, [subject to exceptions up to a maximum of eight years, set out in Annex 1,] after the date of entry into force of this agreement.

24. Contracting parties shall not encourage nor support the adoption or maintenance by public and private enterprises of 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 upon:

- (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 and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting 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 or extend a safeguard measure shall provide adequate opportunity for prior consultations with those contracting parties having a substantial interest as exporters of the product concerned, with a view to, inter alia, 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. A contracting party shall make a notification before taking a provisional safeguard measure referred to in paragraph 4 above. Consultations shall be initiated immediately after the measure is taken.

29. The results of the consultations referred to in this Section, as well as the results of mid-term reviews referred to in paragraph 13, any form of compensation referred to in paragraph 16, and proposed suspensions of concessions and other obligations referred to in paragraph 17, shall be notified immediately to the CONTRACTING PARTIES by the contracting parties concerned.

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

31. Contracting parties maintaining measures described in paragraphs 21 and 22 above which exist at the date on which this agreement enters into force shall notify such measures to the CONTRACTING PARTIES, not later than 60 days after the entry into force of this agreement.

32. 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.

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

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

35. 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 the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

VIII

SURVEILLANCE

36. 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 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, if they so request, in their consultations under the provisions of this agreement;
- (d) to examine measures covered by paragraphs 21 and 22, monitor the phase-out of such measures and report as appropriate to the CONTRACTING PARTIES;
- (e) to review, at the request of the contracting party taking a safeguard action, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the CONTRACTING PARTIES;

- (f) to receive and review all notifications provided for in this agreement and report as appropriate to the CONTRACTING PARTIES; and
- (g) to perform any other function connected with this agreement that the CONTRACTING PARTIES may determine.

37. To assist the Committee in carrying out its surveillance function, the secretariat shall prepare annually a factual report on the operation of the agreement based on notifications and other reliable information available to it.

IX

DISPUTE SETTLEMENT

38. Contracting parties which consider that their rights under this agreement are being nullified or impaired have recourse to the dispute settlement provisions of the General Agreement.

(ANNEX 1)

(EXCEPTIONS REFERRED TO IN PARAGRAPH 23)