

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5334

9 June 1982

Limited Distribution

Original: English

COMMITTEE ON SAFEGUARDS

Proposal by Australia

The following communication dated 8 June 1982 has been received from the Permanent Mission of Australia.

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1. Australia regards the area of safeguards as a priority issue for the forthcoming Ministerial session. One of the major factors undermining the effectiveness of the General Agreement is the growing use of trade restrictions proscribed by Article XI:1 and which contracting parties either do not attempt to justify in terms of the conditional exemptions to that Article (including actions taken under Article XIX), or the justification of which is disputed by other contracting parties. Evidence of the widespread application of such measures is contained in the GATT inventories on non-tariff measures, whilst an indication of contracting parties' increasing resort to such measures in recent years is provided in GATT document Spec(82)18.
 2. It is also noted that the growing use of so-called voluntary export restraints and orderly marketing arrangements has introduced the additional problem of the application of selective safeguard action.
 3. These developments have led to an imbalance in contracting parties' rights and obligations under the GATT and to a lack of transparency in the application of the GATT's rules on safeguard measures, including surveillance of these measures. We note, for example, that safeguard measures applied by contracting parties (for the most part, developing countries) under Articles XII and XVIII are subject to regular multilateral scrutiny by the GATT Committee on Balance of Payments, which may make recommendations in relation to specific measures and keep any matter on which it has made recommendations under surveillance. By contrast, document Spec(82)18 shows that few contracting parties subject their safeguard actions to the disciplines of Article XIX, which includes provision for affected contracting parties to consult and to suspend substantially equivalent concessions. There is clearly a large number of safeguard measures which are not subject to comparable disciplines.

4. In these circumstances, Australia considers that an equitable and comprehensive new framework on safeguards is urgently required. We consider that this framework would be of such fundamental importance to the effective operation of the GATT that it should be set in place as a consensus decision of the contracting parties as was the case with the MTN framework agreements, rather than through a new code or agreement which governments would be required to formally accept. Experience with the MTN codes shows that where the latter course is followed, only a limited number of governments participate in the negotiation of the agreement and/or subsequently accept the agreement, with the result that there are now two sets of rules applying between different contracting parties on particular issues.

5. In Australia's view the aim of the new framework on safeguards should be:

(i) To ensure adherence to the basic GATT principle that, except in certain specified cases, protection of domestic industry against import competition should be effected through tariff rather than non-tariff measures;

(ii) To provide effective and equitable disciplines, including reciprocity through compensation or retaliation on all proscribed non-tariff safeguard measures that can only be justified in terms of Article XIX; and

(iii) To provide effective and equitable disciplines, including reciprocity through compensation or retaliation, in cases of temporary breaches to GATT concessions, whether the breach be through tariff or non-tariff measures.

6. Accordingly, Australia proposes that Ministers would make a declaration along the following lines:

"Ministers are concerned with the widespread and increasing use of restrictions on trade to safeguard domestic industries, other than through duties, taxes and other charges, that are not subject to equitable disciplines under the GATT. In particular, they note that few contracting parties bring safeguard actions that are proscribed by the GATT under the disciplines of Article XIX of the General Agreement. They agree that the undisciplined growth of such measures poses a most serious threat to international trade and to the efficacy of the GATT. Accordingly, they agree that priority should be given to the negotiation and adoption of a new, equitable and comprehensive framework on safeguards by the contracting parties".

7. We envisage that this Declaration would be supplemented by decisions which set out the parameters for and details of this new framework. We see the main parameters as being:

(i) Statement of the aims of the proposed framework Agreement as noted in paragraph 5 above;

(ii) Reaffirmation that Article XIX, as subsequently clarified in accordance with this Decision, shall apply to all safeguard measures operated in response to the conditions set out in paragraph 1 of that Article;

(iii) Agreement that all new prohibitions or restrictions on trade other than duties, taxes or other charges and other than measures taken under Articles XII or XVIII of the GATT shall be immediately notified to the Committee on Safeguards with details of the justification for the measure in terms of the GATT. In cases where the measure is justified under paragraph 1 or Article XIX, the notification shall contain all available relevant information, including a precise description of the product subject to the measure, the type of measure, the date of implementation, the reasons for the measure and the steps taken to prevent or remedy the need for the measure;

(iv) Agreement that

(a) Measures such as voluntary export restraints and orderly marketing arrangements are trade restrictive measures proscribed under paragraph 1 of Article XI;

(b) Unless these measures are justified under conditional exemptions in the GATT, they shall be subject to the provision of Article XIX and this decision;

(v) Agreement that a contracting party may notify to the Committee on Safeguards, in writing, any existing or new prohibition or restriction as defined in point (iii) above, together with advice on how that Measure has damaged or threatens to damage its trade or interests. In such cases the contracting party applying the measure shall, within a period of thirty days from the circulation of the notification by the Committee, provide the Committee with a detailed, written explanation of its justification, under the GATT, for the measure. The secretariat shall circulate this document to the contracting parties. If the measure is justified in terms of paragraph 1 of Article XIX, the commencement date for rights under paragraph 3 of that Article shall be the date of circulation, by the Committee, of the response by the contracting party maintaining the measure;

(vi) Agreement that if a contracting party disputes the justification for any measure notified in accordance with this decision, it may request in writing that the Committee on Safeguards (or a body established by the Committee) examine the justification for the measure with a view to determining whether or not the disciplines under paragraphs 2 and 3 of Article XIX shall apply. The contracting party requesting this examination shall provide to the Committee an explanation as to how the measure in question has damaged or threatens to damage its trade or interests. The Committee shall, within a period of three months from the request, attempt to reach a conclusion and make recommendations on such disputes;

(vii) Agreement that where an affected contracting party intends to take action under paragraph 3(a) of Article XIX, the parties involved should endeavour to agree to the provision of compensatory action by the contracting party maintaining the Article XIX restrictions, on a non-discriminatory basis, rather than the suspension of substantially equivalent concessions by the affected contracting party. This provision does not, however, prejudice the right of a contracting party to take retaliatory action in accordance with paragraph 3(a) of Article XIX;

(viii) Agreement that where signatories to the Code on Technical Barriers to Trade wish to dispute measures falling under the responsibility of that Code, these matters should be taken up under the Code;

(ix) Agreement that in cases where trade restrictive measures are being implemented in contravention of the provisions of the GATT, but are permitted by special waivers of reservations, a contracting party having a substantial interest as an exporter of the product or products concerned may exercise the rights provided for under paragraphs 2 and 3 of Article XIX, with the date of commencement of these rights to be the date on which that contracting party notifies the Committee, in writing, of its intention to have recourse to the consultation provisions under paragraph 2 of that Article;

(x) Agreement that existing provisions for surveillance of safeguard measures taken under Article XII or XVIII shall be maintained;

(xi) Agreement that the Committee on Safeguards shall be established as a permanent body:

(a) To examine further the provisions of Article XIX with a view to clarifying its application, particularly the circumstances in which selective measures such as voluntary export restraints and orderly marketing arrangements may be applied, the basis on which

emergency safeguard action may be taken, the nature and extent of the safeguard action and the concept of the suspension of "substantially equivalent concessions or other obligations under this agreement". Such clarifications shall be included in the framework agreement by a decision of the contracting parties;

(b) To carry out the functions assigned to it in this and subsequent decisions of the contracting parties;

(xii) Recognition that this framework agreement does not prejudice the rights of contracting parties under Articles XXII and XXIII of the General Agreement.