

GENERAL AGREEMENT ON TARIFFS AND TRADE

COMMITTEE ON SAFEGUARDS

Minutes of the Meeting of 9 June 1982

Chairman : Mr. A. Dunkel

1. The Committee on Safeguards held its fifth meeting on 9 June 1982. It had before it Spec(82)18/Rev.1, a document revised and updated by the secretariat on its own responsibility after further consultation with delegations, and containing a list of measures which were taken and notified under Article XIX, as well as other measures which appeared to serve the same purpose.
2. The Chairman while drawing the attention of the Committee to Spec(82)18/Rev.1 and inviting comments on it recalled in particular that it was agreed at the end of the last meeting that the Committee should try at this meeting to arrive at more concrete ideas covering possible action in the area of safeguards in the context of the Ministerial Meeting.
3. A number of delegations expressed the view that the updated and revised list in Spec(82)18/Rev.1 provided a useful basis for further work in this area. Some delegations suggested that, in order to achieve a better degree of transparency, the countries involved in arrangements of the types listed in Annex B and C of the document should be identified and that more detailed information should be provided with regard to the nature and operation of these measures. There was a large measure of support for this suggestion. The view was also expressed that arrangements concluded under the MFA as well as residual restrictions should be included in the document. It was also stressed that it was important to agree on the use that should be made of the list of measures in the future work on safeguards.
4. It was agreed that unless contracting parties communicated their objections to the secretariat, the next revised version of Spec(82)18 would identify all the countries involved in arrangements listed in Annex B and C of the document. The secretariat would in addition consult further with the countries concerned with a view to improving to the extent possible the information available with regard to these measures in particular as regards their nature and application.
5. The spokesman for the EEC stated that the EEC and its member States were prepared to enter into negotiations on safeguards with an open mind in order to contribute to find a solution to the problem. The Ministerial Meeting would provide a good opportunity to take stock of the present situation in world trade and to give new impetus to these negotiations. The proliferation of arrangements concluded outside the GATT framework undermined the credibility of the General Agreement. In 1980 total world imports amounted to \$2000 billion. According to the figures contained in the secretariat document imports affected by Article XIX measures amounted to \$1.6 billion representing 0.08% of the

total imports. Imports affected by VERs and OMAs amounted to roughly \$11.6 billion and those under other measures to \$8.4 billion. This meant that about \$20 billion worth of imports was affected by measures outside Article XIX, representing about 1% of total world imports.

6. The same representative stated that one question was the legitimacy of arrangements which did not operate on an erga omnes basis. The background for such measures was often not known. The Community was in favour of trying to bring these arrangements within the GATT framework otherwise they might proliferate even more in the coming years. Any improved safeguard mechanism would have to be efficient and assure equity and security for importers. At the present stage the Community did not exclude a priori any solution as long as it was balanced. The general principle should be that safeguard measures were exceptional and temporary. It was, however, not advisable to rush matters. As a first step the problem areas would have to be clearly defined. It was important to achieve full transparency since this might deter countries from taking certain measures. It should be recognized that the safeguard mechanism needed adaptation to the present realities of world trade otherwise new ways would be found to circumvent them. The Community did not intend to put forward a safeguard proposal at this stage. This, in itself, was ample proof of the openmindedness of the Community.

7. The representative of Japan said that his government recognized the pressing need for a safeguard agreement in order to maintain and strengthen the effective operation of the GATT system. Such an agreement had to be comprehensive, well-balanced, and acceptable to all contracting parties. The basic objective of the safeguard agreement should be to observe and uphold the basic principles of the GATT, i.e. the promotion of free non-discriminatory trade. In other words, the safeguard agreement had to be designed so as not to yield to protectionism but to strengthen the open multilateral trading system. This basic objective could be translated into the following important and practical guidelines : firstly, a safeguard measure, which by definition constituted a trade-restrictive one, should be regarded as an exception and derogation from the basic rules of the GATT; secondly, being an exception, it should be of a temporary nature; and thirdly, since it was a derogation, it should be resorted to in strict compliance with the internationally agreed rules and disciplines. The usefulness of these guidelines in practice was not insignificant. For example, the GATT was bound to deal with so-called "grey area" measures, no matter how much they were disliked. It had often been said that widespread recourse to grey area measures had eroded the credibility of the GATT system. It was important, therefore, to look into these problems in a very serious manner and avoid giving sanction and legitimacy within the GATT system to these measures by means of mere improved transparency. Conditions for invoking safeguard measures, such as a more precise definition of injury and threat thereof were complicated problems which had to be tackled. Here again, the guidelines mentioned above would help in working out a balanced set of rules and disciplines. The same applied to other main elements of the safeguard system, such as compensation, retaliation, notification, multilateral surveillance and dispute settlement. The Ministerial Meeting provided an important

occasion to give a strong political impetus to the work on safeguards. It might, however, not be feasible to attain a comprehensive safeguard agreement by the end of November. As a point of departure one should at once embark upon an in-depth study covering the main elements which could be incorporated into a new safeguard agreement. On that basis, Ministers would be in a position to decide on the basic structure and principles concerning a comprehensive safeguard agreement. This was the minimum one should expect from the Ministerial Meeting in order to enable contracting parties to conclude safeguard negotiations as soon as possible thereafter.

8. The representative of Australia was of the opinion that it was essential to make progress in the area of safeguards. With this in mind his delegation had submitted a detailed proposal which was contained in L/5334. The proposal set out the elements covered by a comprehensive safeguard solution. It contained furthermore a draft Declaration for Ministers as well as the structure for decisions setting out the parameters for and details of a new and equitable safeguard framework. The proposal which was self-contained and was not intended as only an interim solution should improve the efficacy of the safeguard system and of the GATT as a whole. The Australian representative went on to provide a detailed description of his delegation's proposal as contained in L/5334. In conclusion he stated that in the view of his authorities the new safeguard agreement should be adopted by consensus and not by a ratification procedure as was the case with the various MTN codes.

9. The representative of the United States stated that the results of any safeguard solution would have to be adopted by all contracting parties without exception. Such a solution should furthermore provide for full transparency and cover all measures having a safeguard effect including industry to industry arrangements if there was any involvement or approval by governments. Criteria for injury or threat thereof should also be part of the safeguard mechanism. Safeguard measures should be considered as exceptional and temporary. Negotiations should start now in order to advance matters as far as possible by November. If no final agreement could be reached by the time of the Ministerial Meeting Ministers should give instructions that the negotiations should be concluded within a specified time period, e.g. six months. A comprehensive safeguard agreement should enter into force as soon as possible thereafter.

10. The representative of Switzerland stated that most serious efforts should be made to conclude the safeguard negotiations by the time of the Ministerial Meeting. He was of the view that safeguard measures should be regarded as exceptional and temporary. Multilateral rules and control should be extended to grey area measures in order to achieve greatest possible transparency and efficient surveillance. It was important to achieve a balance between the interests of importers, i.e. the possibility to have recourse to safeguard measures, and those of exporters. Switzerland would present a proposal for a safeguard solution.

11. The representative of Finland speaking for the Nordic countries attached great importance to achieving substantial results in the

safeguard area. In their view an achievement on safeguards in the Ministerial Meeting would be one of the principal positive elements of that meeting. The Nordic countries had always emphasized that they would welcome a comprehensive safeguard agreement. They were satisfied to note that certain possibilities of achieving an agreement on a higher level than had originally appeared realistic seemed to be emerging. They would study carefully the Australian proposal and looked forward to participating actively in intensified formal and informal discussions. The time before the Ministerial Meeting should be used to advance as much as possible in the matter.

12. The representative of Canada expressed the view that negotiations on safeguards should start now. If no final results could be obtained by the time of the Ministerial Meeting there should be at least agreement and approval by Ministers on the basic elements of a safeguard solution, e.g. the coverage, notification procedures, compensation and dispute settlement. Ministers should then instruct the contracting parties to conclude negotiations on the details of a safeguard solution within twelve months.

13. The representative of Czechoslovakia stated that while a comprehensive solution of the safeguard problem was desirable, in view of the complexity of the matter a step by step approach might be inevitable. Without sacrificing basic principles of the GATT, particularly the m.f.n. rule, the Ministerial Meeting should take decisions on main unresolved issues like, e.g. the definition of injury and critical circumstances, the coverage, transparency and the powers of the Safeguard Committee. Ministers should also agree that safeguard measures should remain exceptional and temporary and should not nullify permanently contractual obligations, that illegal measures should be phased out, that agreed uniform rules should be applied to all contracting parties, and that procedures for notification, consultation and surveillance should be exhausted before safeguard action was taken. The resolution of the safeguard issue should be directed at solving also other problems, in particular those concerning quantitative restrictions. Ministers should set a time frame and guidelines for further work.

14. The representative of the United Kingdom speaking for Hong Kong said that his delegation was ready to enter into negotiations on the safeguard issue, but, unlike the representative of the EEC, he could not say that Hong Kong would be completely open-minded. He believed that a weak party acting in defence of its essential interests could not afford to be completely flexible. The fundamental principles embodied in the GATT, and in particular the principles of non-discrimination and most-favoured-nation treatment, provided the last line of defence for weak trading partners; and Hong Kong would defend such principles to the best of its ability. Apart from agreements under the MFA, Hong Kong had so far not accepted any voluntary export restraint arrangements or orderly marketing agreements and had been able to resist demands for such measures only because they were illegal under the GATT. Hong Kong was therefore reluctant to have these kinds of measures included in the safeguard negotiations or legalized under the GATT. The proposal made by Australia should be amended to include safeguard measures taken in

the form of tariff quotas. Such measures should also be covered in future revisions of Spec(82)18. He was not referring to the tariff quotas maintained under the GSP schemes of certain countries, but to tariff quotas of the type maintained by Australia, which had the same effect as quantitative restrictions and were recognized by the GATT as having such an effect by their being subjected to the disciplines of Article XIII (Non-discriminatory Administration of Quantitative Restrictions). Hong Kong reserved its position on the proposal that any safeguard solution would have to be adopted by all contracting parties without exception. If the solution provided for selectivity without adequate discipline and multilateral surveillance, some parties might wish to retain the right to refuse to accept such a solution, in which event, the existing Article XIX and its m.f.n. rule would of course remain applicable in respect of such parties. Finally, while his delegation was prepared to negotiate with a view to reaching agreement by the time of the Ministerial Meeting, he would have to propose that, if it did not prove possible to do so by that time, then, before Ministers were to adopt any decision regarding future work on safeguards, they would first have to reaffirm the m.f.n. application of Article XIX.

15. The representative of Yugoslavia noted that most delegations had expressed their readiness to cooperate in seeking a safeguard solution. His country attached great importance to this issue, since the credibility of the GATT and the spirit of multilateralism and pragmatism which it embodied, depended on it. He supported all the efforts directed towards a global and permanent, feasible and equitable solution which was mutually acceptable. The safeguard system should establish an efficient legal mechanism to combat protectionism, ensure greater uniformity and certainty in the implementation of safeguard measures, introduce greater discipline and non-discriminatory and equitable rules relating to recourse to safeguard measures, and protect and improve the multilateral trading system. The Committee had many documents at its disposal which represented a good basis for further work. In his opinion discussions should first concentrate on the structure and guidelines for a future agreement.

16. The representative of Brazil said that work on safeguards should start now but realistically one could not expect to reach a safeguard agreement before the Ministerial Meeting. He suggested therefore as a first step the drawing up of a draft decision on common objectives for a safeguard solution which could be approved by Ministers. Ministers should also instruct the contracting parties to conclude negotiations on a safeguard agreement before the next session of the CONTRACTING PARTIES. The objectives should be the following : definition of the information on measures to be notified to GATT; rules and procedures ensuring maximum transparency concerning the character and application of all safeguard measures; coverage of all measures having a safeguard effect; rules for the use of safeguard measures so as to ensure security and equitable treatment for both importing and exporting countries; a clear definition for determination of injury or threat thereof, for the duration and proportionality of measures and their effects; establishment of a Committee on Safeguards with competence to determine the adequacy of measures in the light of the rules and to supervise

their application; and rules and procedures for effective consultations, dispute settlement and surveillance. Certain ideas along these lines had already been presented to the secretariat and it would be useful if the secretariat could make an attempt to integrate to the extent possible all suggestions and proposals by interested delegations.

17. The representative of New Zealand stated that any new safeguard system would have to be adequate and objective. Certain questions would have to be cleared, like for instance the relationship between safeguard measures and structural adjustment. It was of great importance that any new safeguard agreement applied equally to all sectors of trade and not just to industrial trade.

18. The representative of Hungary said it was important to identify the basic function of the GATT safeguard system which in his view was to allow import protection by legal restrictions in cases where an unexpected emergence of imports, as a consequence of contracted and implemented liberalization measures, caused damage or threat thereof to established domestic industries. His delegation was strongly attached to the m.f.n. rule, in the application of the provisions of the GATT, including those of Article XIX, since this was the basic element in safeguarding the multilateral character of the GATT system, as opposed to bilateralism. The m.f.n. rule also provided a means of protection for smaller trading nations, against unilateral and arbitrary actions. In the negotiations to improve the safeguard system his delegation was ready to accept an approach which would not exclude the examination of any aspect from the negotiations, including that of selectivity. As regards this aspect, however, there should be a clear understanding on behalf of contracting parties that wished to pursue the negotiations with a view to change the m.f.n. functioning of the safeguard system into a selective one, that they did have "clean hands" in their import policy, i.e., they protected their domestic industries against import competition exclusively by measures which were consistent with GATT obligations. This would require - among others - the abolition or justification of all presently applied illegal non-tariff measures, in particular, quantitative restrictions not consistent with Articles XI and XIII of the GATT. His delegation has had some experience on the functioning of a selective safeguard clause which they were ready to share with other delegations in the forthcoming negotiations.

19. The representative of India, referring to statements made earlier in the discussion, said that they indicated some encouraging elements and expressed the hope that sufficient political will would be forthcoming for reaching a comprehensive solution by November. He reiterated his delegation's distinct preference for obtaining a comprehensive safeguard agreement by the time the Ministers meet in November. Efforts should be made to complete as much of the work as possible so that Ministers could put their signature to the major issues which have been identified, and for the rest work should progress sufficiently for Ministers to provide clear guidelines for the completion of the negotiations. The discussions should focus on the main elements of the safeguard issue, e.g. the conditions for taking safeguard action, the geographical coverage of the measures (selectivity), multilateral surveillance and the inclusion of VERs and

OMAs, etc. The objective of this exercise should be towards achieving a safeguard system which would be transparent and objective. He added that his authorities were of the view that all restrictive measures in the textile field and all residual restrictions should be included in the next revision of Spec(82)18 in order to make the document more comprehensive and that it could show the magnitude of the problem. Whilst commending the secretariat on the document itself, he felt it should provide progress towards transparency which was essential for further work towards a comprehensive solution in the area of safeguards.

20. The representative of Chile stated that intensive negotiations on safeguards should start as soon as possible and cover all sectors of trade. The m.f.n. disciplines should be preserved and respected. It was at the same time important to examine with realism also the problem of the grey area measures. Basically all measures having a safeguard effect should be included in the negotiations. He supported the idea put forward in the Australian proposal that a final safeguard agreement should be adopted by consensus.

21. The representative of Austria said his authorities were prepared to co-operate fully in efforts to reach a safeguard solution. He expressed doubts that it would be possible, as suggested in the Australian proposal, to adopt a framework on safeguards by simple consensus. Depending on the content of the final agreement, a ratification procedure might be necessary for internal national reasons. As concerns the idea in the Australian proposal that protection should be effected by tariff rather than non-tariff measures the question arose whether tariff bindings could be withdrawn in such safeguard cases without compensation.

22. The representative of Pakistan was of the opinion that time had come to make serious efforts to improve the safeguard system. There was a certain reluctance among smaller contracting parties to join in these efforts for fear that any new system might be even more to their disadvantage than the old one. Spec(82)18 showed that the disciplines of Article XIX were not adhered to and there was widespread circumvention of the basic rules. A new safeguard agreement should cover also grey area measures. The word "safeguards" should be interpreted in a wider sense and cover Article XIX measures, VERs, OMAs and residual restrictions. A solution calling just for transparency would not be sufficient. There should also be strict disciplines.

23. The representative of Romania stated that a final global safeguard solution should be based on the following criteria: safeguards should be regarded as exceptional and temporary, the m.f.n. principle should be maintained, and there should be efficient surveillance by the Safeguard Committee. The Ministerial Meeting was a good occasion to provide new political impetus to the safeguard negotiations and Ministers should set a deadline for completing the work.

24. The Chairman noted the discussion had shown that it was generally recognized that an equitable safeguard solution should be found. Most delegations considered the Ministerial Meeting a good opportunity to make substantial progress. While it might not be possible realistically to

present to Ministers a complete safeguard solution for adoption, they should be in a position to adopt the main objectives and principles and set a time limit for reaching a final agreement. He noted that delegations were generally of the view that the negotiations should be pursued as expeditiously as possible until the Ministerial Meeting. The secretariat would make a special effort to support the negotiating process. Interested delegations should present their proposals as soon as possible and the secretariat would try to produce a draft showing the areas where agreement or differences of views existed. From the discussion it appeared that there were points where a consensus was clearly within reach, e.g. it was the general view that recourse to safeguard measures should be exceptional and temporary and that an injury criterion should be part of a future safeguard solution, while there were other areas where differences of opinion persisted and a strong negotiating effort was necessary. The Chairman would continue consultations with delegations to support the negotiating process.

25. The next meeting of the Committee on Safeguards was scheduled for 13 July 1982.