ELEMENTS FOR A COMPREHENSIVE UNDERSTANDING OF SAFEGUARDS

Communication from Brazil

The attached working paper, dated 20 May 1987, has been received from the delegation of Brazil. It contains preliminary views of the Brazilian delegation on how discussions on safeguards should be conducted.
The Comprehensive Understanding on Safeguards should take the form of an amendment to Article XIX of the General Agreement. Pending the completion of the requirements for the entering into force of the Amendment, the Understanding would become immediately operative through the adoption of a Protocol of Provisional Application.

2. Safeguards actions under a revised Article XIX would cover emergency situations having to do solely with "serious injury" to domestic producers deriving from unforeseen sudden and substantial increases in imports of specific products traded in accordance with GATT rules. In a situation of "threat of injury", where therefore the injury can be foreseen appropriate negotiations under Article XXVIII of the GATT would be called for.

3. A precise definition of "serious injury" and a clear causal link between "unforeseen sudden and substantial increase in imports" and "serious injury" would have to be established in order for a contracting party to be in a position to resort to safeguards measures.

4. Safeguard action would consist of only two kind of measures:
   
   a) Domestic adjustment assistance measures;
   
   b) Import relief measures.
5. Domestic adjustment assistance measures, adopted as safeguard action, consist of financial support given to firms in the sector affected, through direct subsidies to production or tax incentives.

6. Import relief measures adopted as safeguard action should only take the form of tariff increases to be adopted on a MFN basis.

7. Domestic adjustment assistance measures could be resorted to on the basis of a determination by the applying contracting party of the existence of "serious injury" caused by "unforeseen sudden and substantial increase in imports" of a given product. The program of domestic adjustment assistance measures should be notified before the measures are actually implemented.

8. Import relief measures could be resorted to only after determination by the surveillance body of the persistence of a situation of "serious injury" caused by "sudden and unforeseen sudden and substantial increases in imports" not remedied by the implementation of a program of domestic adjustment assistance measures.

9. A contracting party, affected by the adoption of domestic adjustment assistance measures warranted by the Understanding would not be entitled to invoke its rights under Article XVI or XXIII of the General Agreement.

10. Individual contracting parties members of a customs union, would not be entitled to resort to import relief measures under the new Article XIX. Such action would only be possible for the customs union acting as a collective entity.
11. Import relief measures could only be carried out for a maximum period of ... years, which only if exceeded would give affected contracting parties the right, in order to redress the balance of rights and obligation, to equivalent compensation in other products or to take retaliatory measures of equivalent trade value. Less developed contracting parties would be allowed to apply import relief measures for longer periods of time.

12. Both domestic adjustment assistance measures and import relief measures adopted by a contracting party should be notified. A contracting party affected by such measures would have the right to counter-notification.

13. Safeguard measures under existing Article XIX as well as VER'S and QMA'S being applied at the time of the entering into force of the Protocol of Provisional Application would have to be immediately terminated, if in existence for longer than the maximum period of time allowed for the implementation of the measures, or would be permitted to continue until the completion of such maximum period.

14. A special surveillance body would be established in GATT to monitor the application of domestic adjustment assistance measures and import relief measures taken under the Protocol of Provisional Application and eventually of the Revised Article XIX. This body would also monitor the termination or continuation of safeguard actions being applied at the time of the entering into force of the Protocol of Provisional Application.

15. Import relief measures under the MFA would be phased out after the expiration of the Arrangement over a period of time to be agreed upon, to bring trade in textiles and clothing under the rules and disciplines of the GATT, in particular of its new Article XIX.