ELEMENTS OF AN AGREEMENT ON SAFEGUARDS

Communication from Australia, Hong Kong, Korea
New Zealand and Singapore

The attached working paper, dated 21 May 1987, has been received from the delegations of Australia, Hong Kong, Korea, New Zealand and Singapore.
Elements of an agreement on safeguards

Article XIX of the General Agreement permits governments to grant temporary protection to domestic producers seriously injured or threatened with serious injury under conditions of fair competition. These circumstances are different from those involving unfair trade practices, such as predatory pricing policies, for which specific remedies are provided under other GATT Articles, such as Articles VI and XVI.

All measures not specifically justified under other Articles shall be taken in accordance with the provisions of Article XIX and this agreement.

(1) Objective criteria

(a) Safeguard measures shall be applied strictly in accordance with the criteria set out in paragraph 1 of Article XIX as elaborated in (b) below.

(b) The determination of serious injury or threat thereof shall depend on the establishment of a direct causal link between increased imports and an overall decline in the condition of domestic producers. In making such a determination, the relevant factors to be taken into account include, inter alia, output, sales, export performance, inventories, profits, productivity, return on investment, utilisation of capacity, employment and wages. No one or several of these factors can necessarily give decisive guidance. However, serious injury cannot be deemed to exist where factors such as technological changes or changes in consumer preference or similar factors are instrumental in switches to like and/or directly competitive products made by the same domestic producers.
Coverage

(a) All safeguard measures under Article XIX shall be applied _erga omnes_ without discrimination among contracting parties. They shall be applied only to particular products and shall not be subject to any devices that might produce a narrow and selective definition of source.

(b) Safeguard measures shall normally take the form of tariffs. However, safeguard actions may take the form of quantitative restrictions, in which case the level for the first 12-month period shall not be set below the average level of imports of the particular product concerned during a recent representative period ending immediately prior to the date of notification of the measure. Such a representative period should not include any time during which imports of the particular product concerned were insignificant.

(3) Transparency/Notification

(a) All measures taken under Article XIX shall be notified in accordance with paragraph 2 thereof. Any such notification shall contain all relevant information including the precise description of the product subject to the measure, the type of measure, the reasons for the measure including the evidence of serious injury or threat thereof to the domestic producers, the proposed date of implementation, the expected duration and timetable for phase-out of measures, and the steps taken to prevent or to be taken to remedy the need for the measure.
(b) All other existing protective measures not based on the GATT shall also be notified to the CONTRACTING PARTIES through the Surveillance Body on Safeguards to be established under para. (9) of this decision. Contracting parties agreed that such measures, which include voluntary export restraints, orderly marketing arrangements, industry-to-industry arrangements, and administrative arrangements maintained by governments including on an intergovernmental basis which have a safeguard effect, are trade restrictive measures proscribed under paragraph 1 of Article XI, and that unless they are justified under the conditional exemptions in the GENERAL AGREEMENT, they shall either be brought into conformity with the provisions of Article XIX and this agreement or be eliminated.

(c) Undertakings on the elimination of the proscribed measures referred to in paragraph 3(b) above shall be lodged with the Surveillance Body on Safeguards by the implementing party or parties on the entry into force of this Agreement. These undertakings shall indicate a date not later than two years after the date of the undertaking by which the measures will be eliminated according to a phase-out programme which shall be progressive and trade liberalizing in its effects. Furthermore, the undertaking notifications shall also include details of any related industry structural adjustment arrangements.

4. Temporary nature

All safeguard measures shall be temporary and shall be applied for a period of not more than three years.

5. Degressivity and structural adjustment

(a) Safeguard measures taken for a period longer than 12 months shall be degressive and shall be progressively liberalised during the period of their application. Positive steps to achieve such liberalisation shall be taken at intervals of no more than 12 months. Where the safeguard measures take the form of tariffs, the higher tariff rate should be lowered at intervals of not more than 12 months
with a view to returning by equal stages to the level applied before the safeguard measure is taken. Where the safeguard measures take the form of quantitative restrictions, the size of the quota should be increased by no less than % at intervals of no more than 12 months.

(b) An appropriate programme of structural adjustment should be implemented during the period of application of the safeguard measure.

(6) Extension

Exceptionally, a safeguard measure may be extended provided the following conditions are fully observed:

(a) A comprehensive review of the original determination of serious injury to the domestic producers is to be conducted by the government maintaining the safeguard measure, taking account of the factors listed in paragraph (b) above. If such a review demonstrates that a threat of serious injury to the domestic producers would arise if the measure were to lapse, the government maintaining the measure shall report fully the results of the review with all supporting data and notify the intention to extend the measure to the CONTRACTING PARTIES and shall afford affected contracting parties the opportunity to consult, with regard, inter alia, to compensation, no later than three months before the expiry date of the measures;

(b) A programme of structural adjustment for the domestic producers has commenced during the period of the application of the safeguard measures; and

(c) The total duration of a safeguard measure including any extension shall not exceed five years.
Compensation and retaliation

(a) 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 equitable compensation on a non-discriminatory basis by the contracting party maintaining the Article XIX measures, rather than the suspension of substantially equivalent concessions by the affected contracting party. This does not, however, prejudice the right of a contracting party to take retaliatory action in accordance with paragraph 3(a) of Article XIX.

(b) In such cases where exporting countries are less developed contracting parties, the special situation of those countries should be duly taken into account, and if the parties involved fail to reach an agreement, the Surveillance Body on safeguards will make an appropriate recommendation on compensation.

Consultation

(a) Prior to any safeguard measures or any extensions thereof being taken, the consultation procedures set out in Article XIX, paragraph 2 shall be strictly observed.

(b) In a situation of "critical circumstances" where a contracting party may take safeguard action under paragraph 2 of Article XIX provisionally without prior consultation with those contracting parties having substantial interest as exporters of the product concerned, the period of provisional application of any such measure shall be limited to three months, within which period the relevant requirements of paragraphs 1 and 3(a) above must be met if the measure is to remain in effect in accordance with Article XIX and the terms of this agreement.
Multilateral surveillance

A Surveillance Body on Safeguards open to all contracting parties shall be established as a standing body:

(a) to monitor the implementation of this agreement.

(b) to review at least once a year in the light of paragraphs 1, 3, 5 and 6 above, all the safeguard measures notified to the CONTRACTING PARTIES and make recommendations, as appropriate. Notifications required by this decision should be made to the CONTRACTING PARTIES through the Surveillance Body. It shall submit its findings to the CONTRACTING PARTIES.

(c) to monitor the phase-out of protective measures not based on the GATT but having a safeguard effect (para. 3(b) above).

(d) to review promptly at the request of any contracting party any particular safeguard measure. It shall make recommendations as appropriate to the contracting party or parties concerned.

(e) Contracting parties shall do their utmost to accept in full the recommendations of the Surveillance Body on Safeguards. Where they consider themselves unable to follow any such recommendations, they shall forthwith inform the Surveillance Body on Safeguards of the reasons therefor and of the extent to which they are able to follow the recommendations.

(f) If, following recommendations by the Surveillance Body on Safeguards, problems continue to exist between the parties, these may be brought before the CONTRACTING PARTIES through the normal GATT procedures.