COMMUNICATION FROM BRAZIL

The attached statement, made by the representative of Brazil at the meeting of the Group on 25 May 1987, is circulated at the request of the Brazilian delegation to the members of the Negotiating Group on Safeguards.
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IN INTRODUCING A "WORKING PAPER" ON "ELEMENTS FOR A COMPREHENSIVE UNDERSTANDING ON SAFEGUARDS", I WOULD LIKE, WITH YOUR PERMISSION, TO REFER TO SOME BASIC PRINCIPLES OF THE GENERAL AGREEMENT THAT CONFORM, IN MY VIEW, THE FRAMEWORK WITHIN WHICH THIS NEGOTIATING GROUP SHOULD ADDRESS THE QUESTION OF SAFEGUARDS.

2. THE MOST CENTRAL PRINCIPLE ON WHICH THE GATT HAS BEEN BUILT IS UNDOUBTEDLY THAT OF NON-DISCRIMINATION. PARTIES TO THE GATT ARE EXPECTED, FIRST AND FOREMOST, TO TREAT EQUALLY ALL SUPPLIERS, AT WHATEVER LEVEL OF PROTECTION AFFORDED TO THEIR RESPECTIVE DOMESTIC PRODUCERS. THE OBLIGATION NOT TO DISCRIMINATE OVERSHADOWS ANY OTHER OBJECTIVE IN THE GATT, INCLUDING THAT OF LIBERALIZING TRADE THROUGH THE REDUCTION OF TARIFF AND OF NON-TARIFF BARRIERS. TRADE LIBERALIZATION IS A TARGET TO BE PURSUED BY COMPLEMENTARY NEGOTIATIONS ON SPECIFIC BARRIERS OR PRODUCTS THE RESULT OF WHICH, EVEN WHEN ONLY BILATERALLY AGREED UPON, MUST BE EXTENDED TO ALL CONTRACTING PARTIES ON A MFN BASIS.

3. ONE FUNDAMENTAL ENGAGEMENT DERIVING FROM THE GENERAL AGREEMENT IS THAT EACH CONTRACTING PARTY MUST ACCEPT EXTERNAL COMPETITION PROVIDED IT TAKES PLACE IN OBSERVANCE OF GATT PRINCIPLES AND MUST BE PREPARED CONSEQUENTLY TO LET ITS DOMESTIC PRODUCERS ADJUST NATURALLY TO SUCH FAIR COMPETITION, BY ACCEPTING THE OPERATION OF THE MARKET FORCES. THERE ARE OF COURSE SITUATIONS, IN WHICH CONTRACTING PARTIES ARE ALLOWED TO DEPART FROM THIS GENERAL RULE AND ARE ENTITLED TO INTERVENE, THROUGH GOVERNMENT ACTION. IN SUCH EXCEPTIONAL CASES, INDIVIDUAL CONTRACTING PARTIES ARE GIVEN THE
RIGHT TO DEVIATE EITHER FROM THE OBSERVANCE OF GENERAL GATT RULES OR FROM SPECIFIC OBLIGATIONS OF TRADE LIBERALIZATION ASSUMED IN NEGOTIATIONS CONDUCTED IN ACCORDANCE WITH SUCH GATT RULES AS THE BINDING OF TARIFF RATES.

4. Safeguards, broadly speaking, are those clauses in the GATT which allow individual CPS to protect their economy as a whole or specific sections thereof from a steep rise in imports, irrespective of the fact that they may derive from trade conducted by the exporting country or by its exporters in accordance with GATT rules. In other words, individual CPS can take protective action against the effects of unfair as well as of fair competition by suppliers vis-à-vis domestic producers.

5. In adverse situations created by external unfair competition, GATT safeguards provide for two kinds of specific measures and they are anti-dumping and countervailing duties. Here, the deviations from GATT rules or obligations are the responsibility of the exporting country or of its exporters. Safeguards to remedy such situations are, so to say, inherently selective, destined as they must be to penalize the exporter for non-compliance with GATT rules. In such cases, there is consequently no room to speak of measures to be applied on a MFN basis extending import restrictions to products coming from other sources which may be taking place in conformity with GATT rules.

6. In adverse internal market situations faced by importing countries under the pressure of fair competition from foreign suppliers, GATT rules provide for two types of safeguards. On the one hand, those of Article XII, which allow countries to
IMPOSE IMPORT RESTRICTIONS TO RESTORE BALANCE OF PAYMENTS EQUILIBRIUM. THESE ARE BY DEFINITION MEASURES OF A GENERAL NATURE HAVING TO DO WITH THE PROTECTION OF THE ECONOMY OF THE IMPORTING COUNTRY AS A WHOLE. SUCH SAFEGUARDS ARE OF A MACROECONOMIC CHARACTER AND MUST BE APPLIED ON AN "ERGA OMNES" BASIS, THAT IS TO SAY, WITHOUT DISCRIMINATION AS TO THE SOURCES OF IMPORTS, REFLECTING, AS THEY GENERALLY DO, INADEQUACIES OF MACROECONOMIC POLICIES OF THE IMPORTING COUNTRY OR ITS STAGE OF ECONOMIC DEVELOPMENT RATHER THAN THE INTERESTS OF SPECIFIC SECTORS WHICH MAY HAVE LOST, BY THEIR OWN FAULT, THE ABILITY TO COMPETE.

7. THE OTHER SAFEGUARD POSSIBILITY, IN SITUATIONS OF FAIR COMPETITION, IS THE ONE DEALT WITH IN ARTICLE XIX. UNDER THIS ARTICLE, INDIVIDUAL CONTRACTING PARTIES CAN TAKE EMERGENCY ACTION TO PROTECT DOMESTIC PRODUCERS OF A GIVEN PRODUCT AN ACTION WHICH CAN BE RESORTED TO BY WITHDRAWAL OF TARIFF CONCESSIONS GRANTED ON A BOUND BASIS TO ALL CPS. IN SUCH A CASE, INJURY MUST BE DEMONSTRATED AND A CAUSAL LINK ESTABLISHED BETWEEN THE UNEXPECTED RISE IN IMPORTS AND THE VERIFIED INJURY TO DOMESTIC PRODUCERS. THE IMPORTING COUNTRY IS EXPECTED TO CONSULT BEFOREHAND WITH THE AFFECTED COUNTRIES AND IN ANY CASE IS UNDER THE OBLIGATION TO OFFER THEM COMPENSATION IN OTHER PRODUCTS. FAILING THAT, THE AFFECTED COUNTRIES HAVE THE RIGHT TO TAKE RETALIATORY ACTION IN ORDER TO RE-ESTABLISH THE PREVIOUS EXISTING BALANCE OF RIGHTS AND OBLIGATIONS. ITS GOES WITHOUT SAYING, THAT, GIVEN THE INNER LOGIC OF ARTICLE XIX, SAFEGUARD ACTION PERMITTED UNDER IT CANNOT BUT BE APPLIED ON A NON-DISCRIMINATORY BASIS, FOR NO EXPORTER IN PARTICULAR CAN BE HELD RESPONSIBLE FOR THE SITUATION CREATED.
8. Under the pressure of microeconomic unfair competition situations, which would naturally fall under Article XIX, importing countries, mainly industrialized ones, have increasingly resorted, however, to selective actions, either by misuse of the right to impose anti-dumping and countervailing duties or by forcing upon exporting countries the so-called gray area measures - VERS and OMAs - unforeseen in GATT if not openly inconsistent with it. In one sector, that of trade in textiles and clothing, importing countries have succeeded in obtaining a legal coverage to get away from their general obligations under the GATT and from the specific duty to resort solely, when necessary, to Article XIX safeguards.

9. There is a general awareness, at least at the level of governments, that the persistence of this situation cannot go on unchecked. In practice, nevertheless, the corruption of the GATT multilateral system is proceeding unabatedly under the pressure in major developed countries of vested interests of groups which somehow manage to impose their view at the domestic level, over and above the interests of consumers or the broader national interest.

10. The Uruguay Round, by including a specific mandate on negotiations to clarify and reinforce GATT disciplines on safeguards and by acknowledging the priority of such negotiations within the Round, offers us another opportunity to come to grips with this
KEY PROBLEM. WE CANNOT FAIL AGAIN, AS IT HAPPENED IN THE TOKYO ROUND. INDEED, IT IS ALREADY VERY DIFFICULT, UNDER THE PRESENT CONDITIONS, TO PRESERVE THE VALUE OF TRADE CONCESSIONS EXCHANGED IN PREVIOUS ROUNDS; IT WILL CERTAINLY BE EVEN MORE PROBLEMATIC TO CONCEIVE OF ADDITIONAL LIBERALIZATION RESULTS IN THE URUGUAY ROUND, IF THE SAFEGUARDS ISSUES CANNOT THIS TIME BE ADEQUATELY DEALT WITH. THIS WILL BE PARTICULARLY THE CASE FOR LDCs, BY DEFINITION POWERLESS BEFORE THE MAJOR TRADING PARTNERS. FOR LDCs TO PURSUE EXPORT ORIENTED POLICIES AND TO ACCEPT A GREATER INTEGRATION IN THE WORLD TRADING SYSTEM BY "BINDING" OR REDUCING THEIR TARIFFS IT IS ABSOLUTELY NECESSARY TO BE ABLE TO RELY ON A PREDICTABLE FRAMEWORK OF RULES, OPERATING IN A NON-DISCRIMINATORY MANNER. THERE WILL BE NO INCENTIVE FOR LDCs TO ENGAGE IN THIS DIRECTION, IF THEIR EXPORTS, WHENEVER THEY BECOME COMPETITIVE, ARE TO BE SUBJECT TO ARBITRARY AND DISCRIMINATORY ACTIONS WHICH NEGATE FREE TRADE AND AGAINST WHICH LDC's, INDIVIDUALLY OR COLLECTIVELY, HAVE NO POSSIBILITY OF EXERCISING ANY EFFECTIVE COUNTERVAILING POWER.

11. TO MY DELEGATION, AN EFFORT TO SOLVE THE QUESTION SHOULD NOT BE SOUGHT IN A MERE ATTEMPT, AS WISHED BY SOME, TO BROADEN ARTICLE XIX'S SCOPE IN A MANNER WHICH WOULD GIVE LEGAL COVERAGE IN THE FUTURE TO SAFEGUARD ACTIONS OF A SELECTIVE NATURE, IN THE FORM OF VERS OR OMAs. OUR FEELING IS, ON THE CONTRARY, THAT WE MUST WORK IN THE DIRECTION OF OUTLAWING SUCH BILATERAL AND SELECTIVE ACTIONS, INSTITUTING PRECISE, FIRM AND TRANSPARENT RULES WHICH WILL INDUCE GOVERNMENTS TO GO THE GATT WAY AND FACILITATE THEIR TASK IN RESISTING, WITH THE ASSISTANCE OF OTHER INTERNAL SECTORS, APPEALS FOR UNWARRANTED FORMS OF PROTECTION, WHICH, IN THE LONG RUN, WORK AGAINST THE VERY INTERESTS OF COUNTRIES RESORTING TO THEM.
12. Starting from the notion that fair exporters should not be punished, our thinking is that in microeconomic situations to which Article XIX addresses itself, the burden of domestic adjustment has to be sustained by the economy of the importing country, particularly those of developed nations. Governmental action to correct negative effects of the operation of market forces should, specially for developed countries, consist, consequently and primarily, of government assistance to adjustment by domestic producers. Only in an eventual second phase, should measures at the border - import restrictions - be made possible and that by collective determination by CUs of injury and of its derivative link from the rise in imports. Normally, such course of action should be left open mainly to LDCs.

13. It would not seem to be a consistent position that of maintaining, on the one hand, that governments should not interfere with the market by granting assistance to domestic adjustment and, on the other, to defend not only the right but even the duty of governments to impede the operation of free and fair trade by the adoption of measures at the border.

14. As can be seen the notion of special and more favorable treatment for LDCs, should to our view, form an integral element of the new Article XIX, a constitutional part of its very foundation, rather than a mere exception or after-thought to what may be decided to be reasonable to govern, in this area of safeguards, the relations among or between developed trading partners.

15. This is, Mr. Chairman, the general background to the elements contained in the Working Paper of the Brazilian Delegation. They represent unavoidably a preliminary stage of our thinking and are offered mainly as a contribution to the debate, in the hope of expediting our deliberations. The Brazilian Delegation is prepared,
OF COURSE, TO LISTEN ATTENTIVELY TO SUGGESTIONS BY OTHER DELEGATIONS AND
to consider with care any comments others may think our own ideas
deserve. This will certainly help this Delegation to come to more
elaborate formulations and to be in a position, at a later stage,
to put forward, perhaps in association with other Delegations, more
formal and structured proposals, which will include precise defi-
nitions of "injury", and of the "causal link" between it and rise
in imports. My Delegation expects to be able by then to address
such other questions as the possibility of differentiating in the
application of safeguards between agricultural and manufactured
goods.