

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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As noted in document MTN/3D/1, the GATT contains a number of provisions which may be invoked to deal with various specified contingencies. Article XIX, however, was specifically included to allow emergency protective action when increased imports cause or threaten serious injury to domestic producers. We believe, therefore, that a thorough examination and analysis of the present GATT Article XIX system should constitute the first stage of the subgroup's work. The examination should focus on:

- what the present system was intended to accomplish,
- how it has operated,
- why there has been such limited application of its provisions,
- and why countries have turned to special measures or other GATT Articles to safeguard domestic producers.

After the present system has been analyzed, we should be in a good position to explore ways of correcting problems identified and go on to develop the elements of an improved system. This might be regarded as the second stage of the subgroup's work programme.

If this general approach is acceptable, we believe the GATT secretariat might be asked to do two things to facilitate the examination. First, we will need a better indication of the scope and nature of the present problem. The secretariat has done a commendable job of assembling available information on safeguards in document MTN/3D/1. As the secretariat has itself indicated, however, the note is incomplete in several important respects. I have a few detailed comments, which I

should like to make later, on the secretariat paper and the types of additional information we think might be useful. What we have in mind, however, is a survey somewhat along the lines of the one carried out in 1960 in connexion with GATT consideration of the market disruptive issue. The survey might cover:

- measures countries take to protect against commercial injury
- international procedures or arrangements outside GATT under which restrictive measures are applied and
- domestic procedures for handling commercial injury cases (whether action is taken internationally within GATT or outside GATT).

Our second suggestion would be that the secretariat prepare a short analytical paper. While document MTN/3D/1 contains much factual information on the provisions, procedures and operation of GATT Article XIX there is no identification and analysis of the reasons why the GATT safeguard system centered on Article XIX has not functioned well. An analytical paper addressing these issues would provide a useful basis on which to begin discussion in the first stage of our work programme. The following are among the issues that might be dealt with in this paper:

(a) We note that the most frequent users of Article XIX have been the United States during the 1950's, and Australia and Canada during the 1960's. We note also that these are the countries mentioned as having statutory requirements for public investigation of possible escape clause actions. Has the existence or non-existence of public domestic procedures influenced the extent to which countries have utilized the parallel GATT provisions rather than alternative arrangements? Have such domestic procedures minimized the total resort to restrictive action? Have review provisions in domestic procedures tended to shorten the time during which escape clause actions remain in force?

(b) Invocation of Article XIX exposes a country to the possibility of discriminatory retaliation if agreement is not reached with affected trading partners. Has this inhibited resort to the GATT procedures?

- (c) Although the text of Article XIX does not mention compensation specifically, compensation has been granted in a great many Article XIX cases - and in all but three or four United States actions. Has the need to provide compensation induced countries to seek alternative solutions? Does the grant of compensation reduce pressure to restore the original concession tending to make escape clause actions permanent? Is compensation appropriate in escape clause cases?
- (d) What is the relationship between Articles XIX and XXVIII? Under the latter, countries can renegotiate tariff concessions during the open season without explaining the reasons why such action is necessary. Liberal, periodic use of Article XXVIII might greatly have reduced the use of Article XIX. In this connexion, document MTN/3D/2 contains some summary information on the operation of Article XXVIII. It would be helpful if the secretariat could expand this section to indicate the scope and frequency with which individual countries have had recourse to these provisions.
- (e) Article XIX has been interpreted as permitting only non-discriminatory escape clause action. Has this requirement been a major factor in inducing countries to seek alternative solutions? Has the need to prove serious injury or to submit to multilateral examination inhibited resort to Article XIX?
- (f) Are there certain types of products, industrial sectors, or special situations that do not lend themselves to the Article XIX mechanism?

Discussion based on an analytical, or issues paper of this type prepared by the secretariat should help to identify and indicate the relative importance of various factors influencing the effectiveness of the present system.