

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

GROUP 3(d) - SAFEGUARDS

Draft Report to the Trade Negotiations Committee

1. In conformity with the decision taken by the Trade Negotiations Committee at its July 1974 meeting, Group 3(d) met on 17 and 18 October 1974, in order to carry out technical and analytical work on the multilateral safeguard system (MTN/P/3 paragraph 26).
2. The view was expressed that it would be difficult to make detailed comments on the existing safeguard provisions or to agree on changes or improvements to the present system before the precise contents of the multilateral trade negotiations were known. Some delegations questioned whether Article XIX, in its present form, was really inadequate, but recognized that there had been certain difficulties in the application of this provision. They felt that it was very difficult at this stage to define the nature of the problems. Nevertheless, they were prepared to enter into a discussion with other delegations in order to clarify the problems and search for possible solutions.
3. Some delegations expressed concern over the lack of international discipline in the area of safeguards and stressed the need for an examination of the present multilateral safeguard system based on Article XIX. The availability of a satisfactory safeguard system would be a necessary condition for maximum trade liberalization. It would also be an important element for improved management of problems and friction in international trade relations. It was emphasized that such an improved system could only be developed in multilateral trade negotiations which provided an opportunity for the maximum number of importing and exporting countries to ascertain that their interests were protected. Existing unilateral and bilateral restrictions not in conformity with international trade rules should be abolished at the same time as the new safeguard system was introduced.

4. Delegations from developing countries stressed that they attached great importance to the reformulation of present GATT rules in the context of the Multilateral Trade Negotiations and, in this connexion, the question of safeguards should be accorded high priority. They emphasized that differentiated and more favourable treatment for developing countries was necessary, feasible and appropriate in the field of safeguards. These delegations supported proposals which had been made earlier in the Committee on Trade and Development and more recently in UNCTAD. In particular, they underlined that the general rule should be that safeguard measures should not be applied by developed countries to imports from developing countries. Exceptions could be made to this rule only in specific and clearly delineated circumstances and only after prior consultations had taken place with the affected developing countries and after the safeguard measures had been expressly authorized by an appropriate multilateral body. They also expressed the view that safeguard action should only be taken in a case of proven actual injury to domestic industry rather than in cases of potential injury.

Furthermore, such action should take into account possible damage to the exporting industries of the developing countries. Until the elaboration of new general rules, they proposed that the developed countries should refrain from using safeguard measures against imports from developing countries.

5. There was agreement in the Group that the multilateral safeguard system should cover the entire range of international trade, i.e. with industrial and agricultural products and that the system should apply to all countries alike.

6. Some delegations were of the opinion that the safeguard provisions should be amended so that in future they would only be applied to countries whose exports were causing material injury. These delegations felt that the safeguard clause

of the Arrangement Regarding International Trade in Textiles provided an interesting precedent for the possibility of a selective approach. Other delegations, however, said that the principle of non-discrimination in the application of safeguard measures should remain valid and any departure from this principle would necessarily lead to the proliferation of safeguard actions. These delegations reminded the Group that during the negotiations leading to the Arrangement Regarding International Trade in Textiles, it was clearly understood that any solution arrived at in the context of textiles would not prejudice the position of any country in the multilateral trade negotiations.

7. Some delegations pointed out that there were two types of safeguard situation: short-term emergencies, on the one hand, and longer-term problems on the other. In the former case, safeguard measures proper were warranted. In the latter case, structural changes were required and these should be brought about by adjustment assistance measures. It was, however, for national governments to decide to what degree such measures should be taken.

8. Some delegations said that any reform of the multilateral safeguard system must involve the setting up of an international surveillance mechanism. Under such a mechanism, any Article XIX action would be subjected to international scrutiny. Should the international community decide that the projected safeguard action was not, in fact, warranted, the importing country would have to cease application of the measure within a given period of time and in case of refusal to withdraw the measure, the exporting country would be authorized to take retaliatory action. These delegations could not support the idea put forward by other delegations that the decision whether a particular safeguard action was justified rested with the importing country.

9. Delegations from developing countries supported the idea of establishing a multilateral surveillance body to supervise the operation of the safeguard system. Such a multilateral surveillance body would, inter alia, be responsible for the establishment of rules and procedures for consultations, the determination of injury, and the application of differentiated treatment to the exports of developing countries. They said developed countries should put greater emphasis on adjustment assistance measures in order to make a resort to safeguard measures unnecessary. However, the aim of such adjustment assistance should not be to restore profitability to the affected industries but rather to bring about a transfer of resources to more efficient sectors of the economy, thus contributing to a more rational international division of labour.

10. Delegations from developing countries furthermore pointed to the need to elaborate special and more flexible provisions in order to facilitate the application by these countries of safeguard measures in accordance with their particular needs and interest. Other delegations noted that developing countries had in a number of cases in the past resorted to Article XIX, and questioned whether any real problems existed for developing countries in this regard.

11. The Group agreed that the two secretariat papers (MTN/3D/1 and MTN/3D/2) provided a useful basis for the examination of safeguards. Some delegations, however, expressed reservations with respect to some of the information in these notes and the appropriateness of the inclusion of certain elements contained therein. Proposals were made to expand some parts of these notes. e.g. the chapter on the Arrangement Regarding International Trade in Textiles.

12. One delegation proposed that the Group, in a first stage of its work, should examine and analyse the present Article XIX system. This examination should focus on the following points:

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

After the present system had been analysed, the Group should explore ways of correcting the problems identified, and go on to develop the elements of an improved system. This might be regarded as the second stage of the Group's work.

13. The same delegation also proposed that if its general approach was acceptable, the secretariat should establish a survey, similar to the one carried out in 1960 in connexion with consideration of the market disruption issue, which would cover:

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

In addition, the secretariat should examine, in an analytical paper, the reasons why the GATT safeguard system centred in Article XIX had not functioned well. Details of this proposal are contained in MTN/3D/W.. .

14. The Group agreed to instruct the secretariat . . .

15. The Group further agreed that several of the questions raised in the course of the discussion, e.g. differentiated treatment to be accorded to developing countries, non-discriminatory application of the safeguard clause, multilateral surveillance and adjustment assistance measures, required further reflection and consideration.