

Negotiating Group on Safeguards

SAFEGUARDS

Draft Text by the Chairman

Section I: GENERAL PROVISIONS

1. This agreement* covers all safeguard measures designed to give protection to domestic industries in the circumstances specified below.
2. Safeguards consist of import relief measures that entail the suspension, in whole or in part, of obligations, including concessions under the GATT, and are designed to prevent or remedy certain emergency situations and to facilitate structural adjustment of domestic industries or the reallocation of resources, as provided for in Section II below.
3. Structural adjustment assistance measures are those taken in support of structural adjustment programmes of domestic industries under the conditions set out in Section III below.

Section II: CONDITIONS

4. A contracting party [or a customs union] may apply safeguard measures to a product being imported into its territory, only in a situation in which other GATT provisions do not provide specific remedies (e.g. Articles VI, XVI or XXVIII), and on the conditions that:
 - (a) there has been an unforeseen, sharp and substantial increase in the quantity of such product being imported;
 - (b) the competent national authorities of the importing contracting party have established that such increase is causing serious injury to domestic producers of like or directly competitive products; and

* The legal form of this agreement will be examined at a later stage.

(c) the measures are applied to products from all sources*

5. Serious injury shall be understood to mean a severe or critical overall deterioration in the position of domestic producers responsible for at least a major proportion of the domestic production of like products or directly competitive products.
6. Safeguard measures may also be applied in case of threat of serious injury, which shall be understood to mean serious injury that is clearly imminent and is demonstrated to be a virtual certainty.
7. For the purposes of this agreement, domestic producers shall be understood to be those operating within the customs territory of a contracting party [or within the customs territory of a customs union].
8. In the determination of whether or not serious injury or threat thereof exists, all relevant factors of an objective and quantifiable nature having a bearing on the position of the domestic producers shall be taken into account, such as: output, inventories, utilization of capacity, productivity, employment, wages, sales, market share, exports, domestic prices, import and export prices, pace of import increase, return on investment, profits and losses. This list is not exhaustive; neither one of these factors alone, nor even several of them may necessarily be decisive in the process of determination; but serious injury or threat thereof not causally linked to increased imports shall not weigh in the process of determination.
9. Safeguard measures shall be applied only to the extent as may be necessary to remedy or prevent serious injury or threat thereof and to facilitate adjustment. They should preferably take the form of tariff increases, but may also take the form of quantitative restrictions. No safeguard measure shall have the effect of reducing the quantity of imports below a certain previous representative level.
10. Safeguard measures shall be applied only for the time as may be necessary to remedy or prevent serious injury or threat thereof and to facilitate adjustment. If the expected period of application exceeds (x) years, the proposed measures must be coupled with adjustment measures.
11. Exceptionally, the period of application may be extended, provided the situation is demonstrated to justify it, adjustment measures are taken and pertinent rules of Sections III and IV are observed. The period of application of any safeguard measure shall not exceed (y) years.
12. If the expected duration of any safeguard measure is over one year, it shall be progressively liberalized during the period of application. As soon as feasible, the contracting party taking the measure shall review the situation and, if possible, withdraw it or increase the pace of the liberalization.
13. Safeguard measures shall not be applied to the import of a product which has been subject to such measures within the preceding (z) years.

Section III: STRUCTURAL ADJUSTMENT

14. Contracting parties may adopt structural adjustment assistance measures to support structural adjustment programmes by industries, independently of safeguard measures. Wherever possible, contracting parties should

* The Negotiating Group should examine the possibility of exceptions to this requirement, to be applied in special situations (e.g. serious injury caused by sudden increase in imports from a very limited number of suppliers), which would permit the application of selective measures on a mutually agreed basis, subject to adequate guarantees for all exporting countries and stricter disciplines and surveillance in order to prevent abuse.

give preference to structural adjustment measures in order to avoid the use of safeguard measures.

15. Structural adjustment assistance measures are also temporary in nature and shall be applied only to the extent and for the time as may be necessary for the recovery of the industry concerned.
16. If adjustment measures are taken in association with safeguard measures, the contracting party applying these shall provide the CONTRACTING PARTIES with all the relevant information on the programme of structural adjustment by the industry concerned. Contracting parties choosing to apply structural adjustment assistance measures shall likewise provide the CONTRACTING PARTIES with all the relevant information thereon.
17. There shall be no extension of any safeguard measures in the absence of the implementation of adjustment measures.

Section IV: NOTIFICATION AND CONSULTATION

18. Before taking any safeguard measures, contracting parties shall notify the CONTRACTING PARTIES of (a) the initiation of an investigatory process of serious injury or threat thereof; (b) the finding of serious injury or threat thereof; and (c) the decision to apply or extend safeguard measures.
19. Once a contracting party has determined the existence of serious injury or threat thereof and has decided to take safeguard measures, it shall also provide the CONTRACTING PARTIES with all necessary information both on the determination of serious injury or the threat thereof and on the measures it proposes to take to remedy or to prevent the situation, the proposed date of implementation, expected duration, time-table for phasing out the measures and any other pertinent data.
20. The contracting parties proposing to apply or extend a safeguard measure shall request and give adequate opportunities for consultations with those contracting parties having a substantial interest as exporters of the product concerned.
21. In critical circumstances where delay would cause damage which it would be difficult to repair, safeguard measures may be taken provisionally before the consultations referred to above take place, provided the CONTRACTING PARTIES are notified forthwith and that said consultations are effected immediately after the provisional measures are taken. The period of application of provisional measures shall not exceed (z) months, within which the pertinent requirements of Sections II and IV must be met.
22. Contracting parties may counter-notify measures taken by other contracting parties which have failed to make the proper notifications. Counter-notification shall entail consultations under the provisions of this Section or under paragraph 31(d).

SECTION V: RESPONSE TO SAFEGUARD MEASURES

23. Contracting parties seriously affected by safeguard measures may suspend the application of equivalent concessions or obligations to the trade of the contracting party applying such measures in one or more of the following circumstances:
 - (a) consultations have not been held;

- (b) agreement has not been reached through consultations;
- (c) adjustment measures have not been taken;
- (d) the maximum period allowed for the application of the measures has expired; and
- (e) it has been found by the Safeguards Committee or through a dispute settlement procedure that the safeguard measures do not conform to the rules in force.

24. A contracting party proposing to take safeguard measures may give compensation to the affected exporting contracting parties.

25. The suspension of equivalent concessions or obligations and the offer of compensation shall not apply to safeguard measures of duration not exceeding the period of [x] years indicated in paragraph 10 above.

Section VI: DEVELOPING COUNTRIES

26. Safeguard measures shall not be applied against products originating in least developed contracting parties and in less-developed contracting parties whose market shares in the products concerned are minimal.

27. Less-developed contracting parties shall be allowed the flexibility in the conditions defined by the provisions of the present agreement to apply safeguard measures and structural adjustment assistance measures, which their individual development, financial or trade situation requires.

Section VII: GOVERNMENTAL AND NON-GOVERNMENTAL MEASURES

28. Contracting parties shall keep the CONTRACTING PARTIES informed of their laws, regulations and administrative procedures relating to safeguard measures.

29. Contracting parties shall also notify the CONTRACTING PARTIES of all existing safeguard measures and other measures having the effect of safeguards including non-governmental measures or arrangements, whether or not covered by the provisions of the present agreement.

30. Contracting parties agree to promptly phase out all safeguard measures inconsistent with the provisions of this agreement or to bring them into conformity with this agreement.

Section VIII: SURVEILLANCE AND DISPUTE SETTLEMENT

31. There shall be a Safeguards Committee under the authority of the CONTRACTING PARTIES, with the following functions:

- (a) to monitor and periodically review the application of all measures referred to in Section VII;
- (b) to review, at any time, at the request of an interested contracting party, any particular measure;
- (c) to monitor the phase-out of safeguard measures not consistent with this agreement;

- (d) to assist contracting parties, as appropriate, to develop agreed solutions to problems arising from the application of safeguard measures;
- (e) to report annually and make recommendations, as appropriate, to the CONTRACTING PARTIES on particular cases and on the general implementation of the present agreement;
- (f) to perform any other duty connected with measures dealt with in the present agreement that the CONTRACTING PARTIES may determine.

32. Contracting parties which believe their rights under this agreement are being nullified or impaired have recourse to the dispute settlement provisions of the General Agreement.

The attached draft text of a comprehensive agreement on safeguards has been drawn up by the Chairman of the Negotiating Group on Safeguards as requested by the Trade Negotiations Committee and is based on proposals by participants. The Chairman also took into account the debates so far held in the Negotiating Group, suggestions made by participants in private consultations and provisions of the General Agreement.