

Safeguard Action  
and Structural Adjustment Measures

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1. Many traditional industries in developed countries are facing serious difficulties and there is a tendency to blame these difficulties on foreign competition. Pressure from these industries' owners and labour organisations for import protection and the general economic situation in these countries has led to the proliferation of new trade barriers in recent years.

However, several studies have shown that quantitatively, the threat posed by manufactured imports from developing countries to competing industries in developed countries is relatively small. Compared with the effects of labour-saving technological change, the employment-displacement problems created by imports from developing countries are generally unimportant. One UN study noted that "the aggregate stability or decline of the industrial labour force underlines the crucial role of resource mobility between manufacturing branches. The shift of labour from old, traditional industries to the new and technologically advanced ones, appears to be an essential pre-requisite for future industrial growth".<sup>1</sup>

2. However, some industries may suffer from time to time from a large inflow of imports which is too fast to allow structural changes to occur without imposing real hardship. The use of short-term safeguard measures and positive adjustment assistance represents an important response to situations of sudden and serious injury inflicted on a particular domestic industry by a dramatic rise in imports.

3. The GATT contains a number of safeguard clauses which free a contracting party from several of its obligations when it is facing an exceptional situation. Provisions governing departures from the main GATT rules include Articles XII and XVIII, relating to restrictions to safeguard balance of payments and assistance

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1. UN Economic Commission for Europe, "Structure and Change in European Industry," 1977.

for economic development respectively, and Article XIX, on emergency action on imports of particular products. There are also provisions concerning anti-dumping and countervailing duties, export subsidies and import restrictions on agricultural or fishery products as well as those enabling contracting parties to raise tariffs or other barriers to trade on a more permanent basis and hence to assure more lasting changes in production structures (Article XVIII).

4. An effort to devise an international code on safeguard measures led to the call in the Tokyo Declaration, which formally initiated the latest GATT round of multilateral trade negotiations in September 1973, for a review of Article XIX. The establishment of a more effective international discipline over safeguard measures is of great importance to developing countries. Protectionist pressures in recent years have led to the adoption of new trade restrictions, many of them outside GATT rules, which adversely affect their exports of manufactured products. The developed countries on the other hand have felt that the conditions laid down for invoking Article XIX are too restrictive and they have therefore turned to voluntary export restraints (VERs) and orderly marketing arrangements (OMAs). They favour selectivity in the GATT arrangement to enable them to deal with products coming from particular countries, mainly the newly industrialising countries (NICs) and Japan.

5. This note examines the existing international safeguard system, the main issues in the debate on reforming Article XIX and the position since the end of the Tokyo Round. The importance of structural adjustment measures is stressed.

#### The Existing Safeguard Mechanism Under Article XIX

6. Under Article XIX, emergency action on imports of particular products is limited to the extent and for such time as may be necessary to prevent or remedy the serious injury or threat thereof that gave rise to the action. The origin of the injury must meet three conditions: (i) it must stem from the

tariff reduction that the importing country seeks to withdraw; (ii) it must be the consequence of developments unforeseen at the time that the concession was made; and (iii) it must be caused by an increase in imports in relation to the domestic sales of the same product. But though Article XIX applies only in the case of 'serious injury' it does not define what is meant by this expression. Subsequent practice reveals that both actual injury and the mere threat of damage fall within the scope of the Article. The effects of the injury are defined in a way to exclude the case of producers deprived of potential access to new markets: domestic producers have actually to be injured, implying that they are already in the market at the time when the injury occurs. Article XIX does not specify upon which party lies the onus of proving that its provisions are applicable in a given case. In practice, the plaintiff exporting countries are required to demonstrate that the safeguard measures enacted by an importing party were ill-founded. In general, the GATT envisaged a narrow interpretation of market disruption and therefore small scope for invoking legitimate interference with imports.

7. Interpretations in operating the safeguard clause vary. One view is that any action taken is subject to the rule of non-discrimination set forth in Articles I, II and XII of the General Agreement. Thus there is an implicit prohibition of selective measures in the original system in conformity with the well established GATT principle of equality of treatment. Another view is that Article XIX as it stands could be applied selectively. The wording of Article XIX nowhere mentions non-discrimination. As one writer has stated, "it has formerly been interpreted, within the spirit of the GATT, as requiring non-discrimination. However, the Scandinavian position at the Tokyo Round negotiations apparently has been that no amendment of Article XIX is necessary to introduce selectivity in its application since the Article, as it stands, does not forbid selectivity."<sup>1</sup>

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1. B. Hindley, "Voluntary Export Restraints and Article XIX of the General Agreement on Tariffs and Trade", in J. Black and B. Hindley (ed.), Current Issues in Commercial Policy and Diplomacy, TPRC, 1980.

8. Another feature is that the contracting party must notify the other GATT members so that a consultation or multilateral review takes place. If the consultation fails, contracting parties can take retaliatory measures and the normal dispute settlement provisions of Articles XXII and XXIII can be utilised. A more distinctive feature however is the multilateral surveillance by the Contracting Parties who shall approve retaliatory action. An important part of Article XIX is the principle of balanced advantages. The necessity for granting compensation and the risk of retaliation have a dissuasive effect on the importer country which contemplates resorting to the Article.

9. Article XIX allows action only in respect of one or a few tariff positions at any one time and this necessarily favours specific products. On the question of time-limit and degressivity, Article XIX states that this should be "for such time as may be necessary to prevent or remedy such injury...". This wording enables countries to take action of almost indefinite duration, contrary to the temporary intent of the whole machinery. On this issue, there is pressure for the period to be specified and the extent of the safeguards to be reduced over the period of their application according to a pre-determined time-table.

10. Governments have resorted to the safeguards clause only on rare occasions, in part because the invoking country risks retaliation and in part because the spirit of GATT does not permit discrimination. Up to the 1970s recourse to Article XIX has been requested in only about 50 cases, half of which were followed by compensation or, less frequently, retaliation. Most of the cases were initiated by the United States, followed by Australia and Canada. In these countries, domestic relief procedures enable industries to request governments to resort to safeguards. Industries seeking relief from imports, by claiming market disruption under national legislation, have experienced difficulties in proving serious injury. Thus the escape clause action under US legislation has often been unsuccessful. Of 134 cases investigated by the US Tariff Commission until 1962, the President had invoked the escape

clause in only 15 cases. In the United States, industries which failed to win protection by the escape clause route then proceeded to urge the Executive to adopt VERs and OMAs. There has been more frequent recourse to safeguards in the 1970s due to the world recession, monetary problems and the difficult situation faced by some domestic industries in the developed countries. It has been estimated that the developing countries' exports were involved in more than half of the cases when the developed countries invoked Article XIX. The restrictions imposed in these cases were removed within a year in a third of those involving developing countries whereas in half of the total number of cases, the measures had been in force for over five years.

11. Several governments faced by protectionist pressures found Article XIX too restrictive and inadequate in dealing with the threat of imports from the NICs. Some have therefore opted for discriminatory measures such as import licensing or other kinds of allocation of global quotas. To control imports from the NICs effectively and to avoid compensation claims or retaliation, some large importers imposed discriminatory quotas, invoking not Article XIX but the Protocol of Provisional Application or resorting to direct arrangement with exporters. The Protocol allows previous legislation to be kept in force even if it is incompatible with the provisions of Part II (including Article XIX) of the General Agreement (the so-called "Grandfather provision").

12. The shortcomings of Article XIX have led to a proliferation of new protectionist measures, VERs, OMAs and others, outside the GATT system. The negotiations on a new code therefore sought to deal with specific issues on safeguards within the framework of the GATT.

## Main Issues in the Debate on the Reform of Article XIX

13. The main issues in the negotiations on a new code on safeguards included: selectivity; special and differential measures for developing countries; duration and degressivity of measures; determination of injury; claims for compensation and authorisation to retaliate; strengthening of multilateral surveillance; the extension of such a code to cover VERs; and adjustment assistance.

14. The central issue and the one that led to the failure of the negotiations was the question of selectivity or discriminatory action. A number of governments, particularly members of the European Economic Community, maintained that the code should permit restrictions against selected countries rather than against all countries. For the developed countries, one problem in the present trade situation is to determine the conditions of market access to be given to the NICs. It has been shown that in certain manufactures the NICs have acquired so large a comparative advantage that their exports not only surmount tariff barriers but also break through non-discriminatory quotas. Supporters of selectivity believe it to be one remedy that would need little enforcement machinery and would distort a lesser volume of trade than alternatives. The European Economic Community therefore favoured maintaining Article XIX in its present form but adding a system of selective measures, without compensation schemes but including adjustment assistance commitments and multilateral supervision. According to the Community, selective safeguards would limit the impact of emergency measures and would therefore be less disruptive of trade. Another argument in favour of this was the fact that unilateral safeguard measures were extremely 'expensive' - countries invoking this escape clause had to offer equivalent compensation, in the form of lower tariffs on other goods, to the injured trade partners. This, it was argued, made it harder for governments to agree to substantial tariff cuts which might possibly cause market disruption. They stressed the necessity for adequate defence

against distortions and injuries caused by what they saw as the "aggressive" attitude of certain NICs. Others suggested that the advantages of selectivity, vis. efficiency as a protective device and the absence of claims for compensation from medium-cost producers, seemed more than balanced by any shortcomings.

15. On the other hand, because selective action tends to be taken against the most efficient competitors it goes against the optimal international allocation of resources and thus the efficiency of the world trading system. As the penalised country would attempt to sell its surplus on third markets, there is always a danger of a chain-reaction. Developing countries oppose selectivity as they fear it would result in barriers against low-cost, labour-intensive exports such as footwear, other leather products and clothing. They fear that selectivity would pit economically weak nations against industrialised countries and the developing countries would be at a disadvantage. Non-discrimination increases the number of interested parties, thus dissuading many countries from taking safeguard action. The developing countries' experience of the Multifibre Arrangement (MFA) has shown that weaker trading partners are vulnerable. Japan and some other developed countries favoured upholding Article XIX and strengthening it. They supported the maintenance of the non-discrimination principle as well as the elimination of bilateral restraint.

16. During the negotiations, the developing countries called for differential treatment in their favour. They felt they should be exempted from safeguard measures taken by a developed country and that exceptions to this rule should be justified only in certain circumstances. They also called for the revision of Article XVIII, which allows safeguard action by developing countries for economic development purposes, to be so elaborated as to cover the need for structural adjustments, industrial and agricultural development, and promotion and diversification of exports. During the preparation for UNCTAD IV, several developing



countries had initiated proposals within the Group on Safeguards. These included a general prohibition of actions directed against developing countries, except in cases multilaterally approved, where adjustment assistance commitments have been given and where the proposed action cannot jeopardise the overall increase in exports of the countries concerned.

17. Developed countries oppose the total exemption of developing countries from safeguard action. However, there is considerable support among writers on the subject that some form of differential treatment in favour of developing countries is necessary. Some advocate that recognition should be given to the special interests of exporting countries; others support the setting up of machinery to provide financial compensation for the adverse effects of safeguard measures, or possibly the prohibition of safeguard action against a developing country whose average increase of exports is lower than or equal to the average increase of all exporting countries. The application of safeguard measures to developing countries was one of the major issues which remained unresolved at the end of the negotiations.

18. On the issue of duration and degressivity of safeguard measures the developing countries suggested that a time period (perhaps five years) be specified and that protection should be progressively reduced during that period. They further suggested that there should be no reactivation of protection within a fixed period following the lapse of an earlier measure. Proposals put forward by the United States in 1976 also emphasised the need to limit such safeguards to a specified time period, and to ensure that import relief was not reimposed unless such a period had elapsed since the relief was terminated. Import relief would be phased down to the extent feasible during that period as a spur to progressive adjustment of the industry. Generally it was accepted that safeguard measures should be of short duration.

19. With reference to the determination of injury most industrialised countries favoured the price differential criterion following the MFA example, but the developing countries opposed what they saw as an abusive generalisation of specific options. Conditions of recourse to Article XIX have been so loosely interpreted as to make them ineffective. The customs origin condition appeared no longer to have any meaning as safeguard measures were often of the non-tariff kind and the shifting of comparative advantage was often too large to ensure even a minimal protection by tariff increases.

20. In the debate on the reform of safeguard measures, the issue of claims to compensation and authorisations to retaliate was also at stake. The provisions for safeguard measures are often regarded as too exacting and are thus partly responsible for the circumvention of Article XIX and the proliferation of new protectionist measures such as OMAs and VERs. The disputes settlement machinery within GATT is frequently slow and as there are opportunities to solve problems through discreet bargaining, some countries choose measures other than those under Article XIX. Some believe that the introduction of selectivity would avoid this since interested parties would be few and scattered. Selectivity would ensure that importers would be able to by-pass objections by medium-cost producers. The upholding of the reciprocity principle is important. It is doubtful that GATT could ensure the enforcement of its collective decisions without frequently resorting to the mutual interest created by its reciprocity rules and practices.

21. The strengthening of multilateral surveillance was another major issue which was raised during the negotiations on a safeguard code. The proposal was to set up an international surveillance body to hold hearings and give its opinions on the legality of every safeguard action. Such a body would circulate notification, and use third-party or Secretariat investigation and mediation. The United States and the European Economic

Community favoured the setting up of a Committee on Safeguard Measures modelled on the pattern of other GATT Committees, but other countries, especially Japan, supported the creation of a standing body with the task of supervising/operating much tighter control on the application of the revised safeguard system.

22. There was an attempt to extend Article XIX to cover VERs and other restrictive measures now outside the GATT system. It is difficult to evaluate the volume of developing country exports affected by VERs and other types of new protectionist measures as most of these arrangements are kept secret. However their importance can be deduced from the example of the MFA and the weak resistance developing countries have shown individually when subjected to pressure from industrialised countries. Some industrialised countries such as Japan, which is also a victim of these actions, favour incorporating these measures under Article XIX. All should be subject to full disclosure, international scrutiny and control in the framework of a new safeguard code. It has been suggested that to ensure respect for the pursuit of fair, unfettered global negotiations, in those cases where OMAs or VERs are negotiated or safeguard procedures unilaterally triggered, a clear delineation of the nature of the action should be deposited with the GATT to assure that the arrangement is 'transparent'. Multilateral scrutiny and supervision would protect the weaker trading partners. This issue also was not resolved in the multilateral trade negotiations.

23. Another major issue was the linkage of adjustment to safeguard measures in the code. A combination of safeguard measures accompanied by adjustment assistance is needed to deal with short-term problems by enabling a shift of labour and other resources from the old and traditional industries to the new and technologically advanced ones. Contemporary protectionism can be seen as a refusal to carry out the adjustment indicated by the continuing change in global supply-demand patterns. Reviews of recent economic developments suggest that inadequate adjustment

in the industrial countries may be considered as much a cause of their recent economic problems as a consequence. It is evident that the structural weaknesses and maladjustments which had been developing for a long time in the developed market economy countries have become more obvious with the continued inflation and stagnation in these countries. These are long-run problems, which must be met by long-term adjustment measures rather than short-term palliatives. The encouragement of international trade between developed and developing countries, by improving the international division of labour and thus raising productivity all round, should be attractive to both parties. To deal with adjustment effectively, a country requires a set of economic policies that encourage innovative and competitive production, enabling firms to anticipate and handle adjustment changes with relative ease. There is need to provide the stimulus (for example, by accelerated depreciation allowances, and assistance for research and development) and other aids which would help firms to adapt to changing conditions and workers to acquire new skills, thus enabling firms to move to more capital- and skill-intensive products. It is vital that more countries implement anticipatory measures for structural adjustment. The Netherlands and a few other countries have introduced such anticipatory policies for restructuring, especially to assist industries which are adversely affected by imports from developing countries, but more should do so.

24. At its Ministerial meeting in June 1978 the Council of OECD reached agreement on the major components of a broad programme of internationally concerted action by member countries to achieve more sustained economic growth. One component was the need for policies to facilitate structural adjustment to offset growing pressures for protection against foreign competition. It was agreed that the following criteria be adopted by governments in providing positive adjustment assistance to industry:

- (i) action should be temporary and should, whenever possible, be reduced progressively according to a pre-arranged time-table;
- (ii) such action should be integrally linked to the implementation of plans to phase out obsolete capacity and re-establish financially viable entities; and

- (iii) while recognising that governments must pay due regard to the interests of national security, care should be taken to see that arguments based on considerations of self-sufficiency should not be misused to justify measures for protection and support.

The OECD General Orientations on Positive Adjustment Policies called further for positive adjustment in the fields of manpower, agricultural, regional and regulatory policies with emphasis on outward adjustment. The Orientations had a threefold purpose:

- (i) to reaffirm the need for industrial adjustment to economic changes;
- (ii) to constrain governmental intervention in the adjustment process in order to prevent the diminution of the role of market forces in regulating the optimal allocation of resources to their most productive uses; and
- (iii) to promote the concept of outward adjustment of domestic factors of production in order to avoid policies similar to import protection.

In June 1979, the OECD Council established the Special Group on Positive Adjustment Policies as part of its Economic Policy Committee with a two-year mandate to examine the macro-economic and international consequences of national adjustment policies.

25. The Reports of the Commonwealth Group of Experts on constraints to structural change and economic growth<sup>1</sup> and the Brandt Commission<sup>2</sup> both suggested that "safeguard" action by industrialised countries be permitted only under limited conditions, subject to multilateral supervision and linked to positive

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1. "The World Economic Crisis: A Commonwealth Perspective", Commonwealth Secretariat, 1980.
  2. Independent Commission on International Development Issues: "North-South: A Programme for Survival", Pan Books, 1980.

structural adjustments within their economies. Resolution 131(V), adopted at UNCTAD V in June 1979, on "Protectionism and Structural Adjustment", emphasised the need for adjustment assistance programmes and invited GATT to examine safeguard actions taken by developed countries against supplies from developing countries.

26. At the multilateral trade negotiations, although the link between adjustment measures and safeguards was generally accepted, developing countries were not satisfied and called on industrialised countries for concrete commitments instead of vague declarations. Some developing countries, disappointed by the failure to conclude a safeguard code which would have included provisions for outward adjustment, have proposed the establishment of an Adjustment Committee by the GATT to examine what adjustment measures have been taken in respect of certain products accorded import protection by industrialised countries. The GATT Committee on Trade and Development has already placed the issue of adjustment on its agenda, and a Working Party on Structural Adjustment has been created within the GATT.

27. Reference must be made to activities in UNIDO in relation to the redeployment of industrial capacity from developed to developing countries. The Third UNIDO Conference in February 1980 adopted the New Delhi Declaration and Plan of Action which calls inter alia for a system of intergovernmental consultations on redeployment between developed and developing countries in order to assist in increasing the share of developing countries in world manufacturing output to 25 per cent by the year 2000. However the form of this proposal contributed to the rejection of the Declaration by the developed countries.

28. The major issues on the safeguard clause which remained unresolved at the end of the GATT negotiations were selectivity, the treatment of the VERs and OMAS, and differential measures for developing countries. Failure to agree on these issues prevented the finalisation of those on which there was general consensus.

## The Position since the Tokyo Round

29. At a meeting of the GATT Council on 25 July 1979, the Director-General, in reporting the failure of the negotiations on the code, made the following proposals:

- (i) Contracting Parties should reaffirm their intention to continue to abide by the disciplines and obligations of Article XIX of the General Agreement. It would be expected that the existing rules and practices relating to the modalities of application of Article XIX would be adhered to by the Contracting Parties when taking any future action under that provision.
- (ii) Contracting Parties should undertake to abide by the obligations contained in the understanding reached separately in the multilateral trade negotiations regarding notification, consultation, dispute settlement and surveillance, and in particular by the obligation to notify the Contracting Parties of their adoption of trade measures affecting the operation of the General Agreement.
- (iii) A Committee should be established by the Contracting Parties with the following terms of reference:
  - (a) to continue discussions and negotiations on the question of safeguards, taking into account the work already done, with the aim of elaborating supplementary rules and procedures regarding the application of Article XIX of the General Agreement, in order to provide greater uniformity and certainty in the implementation of its provisions;
  - (b) pending a satisfactory outcome of the discussions and negotiations mentioned in (a) above, to examine any future case of a safeguard measure,

whether taken by Contracting Parties under Article XIX or otherwise, in the light of the relevant provisions of the General Agreement, including Part IV thereof.

A GATT Committee was set up to continue consultation and negotiations with a view to reaching agreement by 30 June 1980, but no such agreement was reached. The second meeting of the Committee on Safeguards was held in October 1980 and the third on 15 April 1981. The two meetings did not show much progress in the efforts to arrive at a solution. At the meeting of the GATT Council of 11 June 1981, the Director-General, in his introduction of the Minutes of the third meeting of the Committee, stressed that most delegations continued to regard the safeguard issue as an important one, and wished to arrive at some substantive result in the area. He urged delegations to come forward with concrete proposals as early as possible and drew attention to paragraph 2 of the conclusion of the Committee's third meeting where it was stated that "Contracting Parties will continue to keep the matter under examination and discussion and to this end the Committee on Safeguards will expedite its work". The Director-General has continued to consult with the delegations.

30. The positions of most countries on the safeguards issue have not changed very much subsequently. The European Economic Community still insists on selectivity but appears to have moderated its view on allowing greater transparency of safeguard measures and some monitoring in respect of them. Japan has indicated its willingness to support the Community's position on "selectivity" on condition that the Community cancels its arrangements which result in limiting Japan's exports to France, the United Kingdom and the Benelux countries and that it abolishes its "discriminatory quota-setting" with regard to 57 Japanese products<sup>1</sup>. For the United States selectivity would be acceptable if the Community were to agree to greater international surveillance of the use of safeguard measures. The developing countries remain firmly against selectivity.

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1. As reported in "Europe", 9 July 1982.



31. Political will on the part of all governments is necessary in the search for a satisfactory solution to the safeguard issue. Adoption of a new code which is not too restrictive and which takes into account the economic problems of both the developed and developing countries would encourage more countries to operate within the GATT rather than taking measures outside it. Many countries regard the safeguards issue as a priority area in the forthcoming GATT Ministerial Session, and one which will have to be satisfactorily resolved if international trade in the 1980s is to be carried on in an open and equitable manner which is satisfactory to all parties, including developing countries.