AGREEMENT ON SAFEGUARDS

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for;

Hereby *agree* as follows:

Article 1

General Provision

This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.

Article 2

Conditions

1. A Member[1] may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

Article 3

Investigation

[1] A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be limited to that member State. Nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994.

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4

Determination of Serious Injury or Threat Thereof

1. For the purposes of this Agreement:

   (a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

   (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

   (c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

   (b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the

domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 5

Application of Safeguard Measures

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the Committee that (*i*) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (*ii*) the reasons for the departure from the provisions in subparagraph (a) are justified, and (*iii*) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 6

Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause

serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 8

Level of Concessions and Other Obligations

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To

achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

Article 9

Developing Country Members

1. Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[2]

2. A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7. Notwithstanding the provisions of paragraph 5 of Article 7, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

Article 10

Pre-existing Article XIX Measures

Members shall terminate all safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on the date of entry into force of the WTO Agreement not later than eight years after the date on which they were first applied or five years after the date of entry into force of the WTO Agreement, whichever comes later.

Article 11

Prohibition and Elimination of Certain Measures

1. (a) A Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.

[2] A Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards.

(b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[3],[4] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.

(c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.

2. The phasing out of measures referred to in paragraph 1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement. These timetables shall provide for all measures referred to in paragraph 1 to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing Member[5], the duration of which shall not extend beyond 31 December 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

3. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 1.

Article 12

Notification and Consultation

1. A Member shall immediately notify the Committee on Safeguards upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased

[3] An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.

[4] Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.

[5] The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.

imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5. The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

6. Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.

8. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.

9. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.

11. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13

Surveillance

1. A Committee on Safeguards is hereby established, under the authority of the Council for Trade in Goods, which shall be open to the participation of any Member indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;

(c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;

(d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

2. To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Article 14

Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

ANNEX

EXCEPTION REFERRED TO IN PARAGRAPH 2 OF ARTICLE 11

Members concerned	Product	Termination
EC/Japan	Passenger cars, off road vehicles, light commercial vehicles, light trucks (up to 5 tonnes), and the same vehicles in wholly knocked-down form (CKD sets).	31 December 1999