

RESTRICTED

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TRADE RESTRICTIONS AFFECTING ARGENTINA  
APPLIED FOR NON-ECONOMIC REASONS

The following communication dated 29 April 1982 has been received from the Permanent Mission of Argentina, with the request that it be circulated to contracting parties in connection with item No. 2 of the proposed agenda for the Council meeting scheduled for 7 May 1982.

I. In addition to infringing the principles and objectives underlying the GATT, the import suspension imposed by the EEC, Australia and Canada is in violation of the fundamental and specific obligations taken on by those countries in their capacity as parties to the General Agreement on Tariffs and Trade, namely:

- the clause of unconditional most-favoured-nation treatment in regard to rules and formalities in connection with imports as set forth in Article I:1;
- the clause of unconditional most-favourable treatment for products included in the schedules of those countries annexed to the GATT, as set forth in Article II;
- the ban on import prohibitions and restrictions (other than customs duties) established in Article XI:1;
- the prohibition of discrimination among countries in the event of application of authorized quantitative restrictions, as envisaged by Article XIII;
- the principles and objectives set forth in Article XXXVI, to be the basis for action by the parties to further the trade and development of developing countries. In this connection, it should be pointed out that the measures affect not only the trade but also the economic and social development of Argentina;

- the commitments set forth in Article XXXVII, paragraphs 1(b), 2(a) and 3(b) and (c) to refrain from introducing or increasing the incidence of obstacles to the trade of developing countries, and to reduce and eliminate them;
- the commitments regarding market access and stabilization set forth in Article XXXVIII.

II. The suspension under reference is not covered by any of the provisions of the GATT providing for release from obligations.

III. It is clear that there has been no pronouncement by the United Nations Security Council authorizing the application of Article XXI(c) of the GATT. In the matter under reference, the Security Council has limited itself to recognizing that there was a breach of the peace in the region of the Islands and to making certain requests to the countries involved, but it has not requested nor authorized, explicitly or implicitly, and accordingly did not consider appropriate, any action on the part of third parties, as would be the case for economic measures of international coercion, nor have any such measures been requested in that forum by any country.

IV. The measures adopted inconsiderately by the countries of the EEC other than the United Kingdom, and by Australia and Canada are entirely without justification, whether within or outside the context of the GATT rules, and coming from countries with which the Argentine Republic has maintained relations free of all dispute they constitute a hostile act and a flagrant economic aggression, affecting the basic principles of international law. Furthermore, the measures adopted by those countries do not derive from any economic or commercial issue, but from their unjustified interference in a territorial dispute which is alien to them, and which dates back to more than a century before the GATT and before the Treaty of Rome, in regard to a territory (Malvinas Islands, South Georgia and South Sandwich) over which sovereignty has always been claimed ever since then, when it was seized, by the Argentine Republic, as has been recognized in pronouncements by the United Nations (Resolutions 2065 (XX), 3160 (XXVIII) and 31/49 (XXXI)).

V. In the case of the United Kingdom too, this country cannot claim any justification for interrupting trade under the GATT rules, nor even under the provisions of Article XXI(b), since the Security Council resolution mentioned above situates the problem solely in the region of the Malvinas Islands, and consequently its metropolitan territory has not been affected nor threatened.

VI. On the other hand, it should be pointed out that Article XXV of the GATT, which envisages the possibility of waiving obligations of contracting parties in exceptional circumstances not provided for in the Agreement, subject to a two-thirds majority of the votes cast, was not invoked prior to adoption of the measures, and cannot be invoked a posteriori.

VII. The injury which the measures adopted by the EEC, Australia and Canada are causing to the Argentine Republic can be evaluated taking into account that value of the latter's annual exports to these countries is in excess of US\$2,000 million.

VIII. Having regard to the situation described above, the Argentine Republic also reserves the right to take formal remedial action within the GATT on the basis of the considerations set forth above, in accordance with the procedure established by the Decision of 5 April 1966 for cases of "conciliation and dispute settlement" where the injured party is a developing country.

IX. Lastly, Argentina wishes to state that by a letter of today's date it has asked the Director-General of GATT to use his good offices so that this situation may be resolved, if possible, before the meeting of the Council of Representatives scheduled for 7 May next.