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1 GENERAL

1.1 Understanding on the Balance-of-Payments provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994)

1.1.1 Text of the Understanding on the Balance-of-Payments Provisions of the GATT 1994

Members,

Recognizing the provisions of Articles XII and XVIII:B of GATT 1994 and of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209, referred to in this Understanding as the "1979 Declaration") and in order to clarify such provisions¹.

(footnote original) ¹ Nothing in this Understanding is intended to modify the rights and obligations of Members under Articles XII or XVIII:B of GATT 1994. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of restrictive import measures taken for balance-of-payments purposes.

Hereby *agree* as follows:

Application of Measures

1. Members confirm their commitment to announce publicly, as soon as possible, time-schedules for the removal of restrictive import measures taken for balance-of-payments purposes. It is understood that such time-schedules may be modified as appropriate to take into account changes in the balance-of-payments situation. Whenever a time-schedule is not publicly announced by a Member, that Member shall provide justification as to the reasons therefor.

2. Members confirm their commitment to give preference to those measures which have the least disruptive effect on trade. Such measures (referred to in this Understanding as "price-based measures") shall be understood to include import surcharges, import deposit requirements or other equivalent trade measures with an impact on the price of imported goods. It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied by a Member in excess of the duties inscribed in the Schedule of that Member. Furthermore, that Member shall indicate the amount by which the price-based measure exceeds the bound duty clearly and separately under the notification procedures of this Understanding.

3. Members shall seek to avoid the imposition of new quantitative restrictions for balance-of-payments purposes unless, because of a critical balance-of-payments situation, price-based measures cannot arrest a sharp deterioration in the external payments position. In those cases in which a Member applies quantitative restrictions, it shall provide justification as to the reasons why price-based measures are not an adequate instrument to deal with the balance-of-payments situation. A Member maintaining quantitative restrictions shall indicate in successive consultations the progress made in significantly reducing the incidence and restrictive effect of such measures. It is understood that not more than one type of restrictive import measure taken for balance-of-payments purposes may be applied on the same product.

4. Members confirm that restrictive import measures taken for balance-of-payments purposes may only be applied to control the general level of imports and may not exceed what is necessary to address the balance-of-payments situation. In order to minimize any incidental protective effects, a Member shall administer restrictions in a transparent manner. The authorities of the importing Member shall provide adequate justification as to the criteria used to determine which products are subject to restriction. As provided in paragraph 3 of Article XII and paragraph 10 of Article XVIII, Members may, in the case of certain essential products, exclude or limit the application of surcharges applied across the board or other measures applied for balance-of-payments purposes. The term "essential products" shall be understood to mean products which meet basic consumption needs or which contribute to the Member's effort to improve its balance-of-payments situation, such as capital goods or inputs needed for production. In the administration of quantitative restrictions, a Member shall use discretionary licensing only when unavoidable and shall phase it out progressively. Appropriate justification shall be provided as to the criteria used to determine allowable import quantities or values.

Procedures for Balance-of-Payments Consultations

5. The Committee on Balance-of-Payments Restrictions (referred to in this Understanding as the "Committee") shall carry out consultations in order to review all restrictive import measures taken for balance-of-payments purposes. The membership of the Committee is open to all Members indicating their wish to serve on it. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved on 28 April 1970 (BISD 18S/48-53, referred to in this Understanding as "full consultation procedures"), subject to the provisions set out below.

6. A Member applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures shall enter into consultations with the Committee within four months of the adoption of such measures. The Member adopting such measures may request that a consultation be held under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII as appropriate. If no such request has been made, the Chairman of the Committee shall invite the Member to hold such a consultation. Factors that may be examined in the consultation would include, inter alia, the introduction of new types of restrictive measures for balance-of-payments purposes, or an increase in the level or product coverage of restrictions.

7. All restrictions applied for balance-of-payments purposes shall be subject to periodic review in the Committee under paragraph 4(b) of Article XII or under paragraph 12(b) of Article XVIII, subject to the possibility of altering the periodicity of consultations in agreement with the consulting Member or pursuant to any specific review procedure that may be recommended by the General Council.

8. Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as "simplified consultation procedures") in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultations procedures may also be used when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether full consultation procedures should be used will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of

least-developed country Members, no more than two successive consultations may be held under simplified consultation procedures.

Notification and Documentation

9. A Member shall notify to the General Council the introduction of or any changes in the application of restrictive import measures taken for balance-of-payments purposes, as well as any modifications in time-schedules for the removal of such measures as announced under paragraph 1. Significant changes shall be notified to the General Council prior to or not later than 30 days after their announcement. On a yearly basis, each Member shall make available to the Secretariat a consolidated notification, including all changes in laws, regulations, policy statements or public notices, for examination by Members. Notifications shall include full information, as far as possible, at the tariff-line level, on the type of measures applied, the criteria used for their administration, product coverage and trade flows affected.

10. At the request of any Member, notifications may be reviewed by the Committee. Such reviews would be limited to the clarification of specific issues raised by a notification or examination of whether a consultation under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII is required. Members which have reasons to believe that a restrictive import measure applied by another Member was taken for balance-of-payments purposes may bring the matter to the attention of the Committee. The Chairman of the Committee shall request information on the measure and make it available to all Members. Without prejudice to the right of any member of the Committee to seek appropriate clarifications in the course of consultations, questions may be submitted in advance for consideration by the consulting Member.

11. The consulting Member shall prepare a Basic Document for the consultations which, in addition to any other information considered to be relevant, should include: (a) an overview of the balance-of-payments situation and prospects, including a consideration of the internal and external factors having a bearing on the balance-of-payments situation and the domestic policy measures taken in order to restore equilibrium on a sound and lasting basis; (b) a full description of the restrictions applied for balance-of-payments purposes, their legal basis and steps taken to reduce incidental protective effects; (c) measures taken since the last consultation to liberalize import restrictions, in the light of the conclusions of the Committee; (d) a plan for the elimination and progressive relaxation of remaining restrictions. References may be made, when relevant, to the information provided in other notifications or reports made to the WTO. Under simplified consultation procedures, the consulting Member shall submit a written statement containing essential information on the elements covered by the Basic Document.

12. The Secretariat shall, with a view to facilitating the consultations in the Committee, prepare a factual background paper dealing with the different aspects of the plan for consultations. In the case of developing country Members, the Secretariat document shall include relevant background and analytical material on the incidence of the external trading environment on the balance-of-payments situation and prospects of the consulting Member. The technical assistance services of the Secretariat shall, at the request of a developing country Member, assist in preparing the documentation for the consultations.

Conclusions of Balance-of-Payments Consultations

13. The Committee shall report on its consultations the General Council. When full consultation procedures have been used, the report should indicate the Committee's conclusions on the different elements of the plan for consultations, as well as the facts and reasons on which they are based. The Committee shall endeavour to include in its conclusions proposals for recommendations aimed at promoting the implementation of Articles XII and XVIII:B, the 1979 Declaration and this Understanding. In those cases in which a time-schedule has been presented for the removal of restrictive measures taken for balance-of-payments purposes, the General Council may recommend that, in adhering to such a time-schedule, a Member shall be deemed to be in compliance with its GATT 1994 obligations. Whenever the General Council has made specific recommendations, the rights and obligations of Members shall be assessed in the light of such recommendations. In the

absence of specific proposals for recommendations by the General Council, the Committee's conclusions should record the different views expressed in the Committee. When simplified consultation procedures have been used, the report shall include a summary of the main elements discussed in the Committee and a decision on whether full consultation procedures are required."

1.1.2 Application of Measures taken for balance-of-payments purposes

1.1.2.1 Paragraph 2

1. Paragraph 2 calls for Members to give preference to those measures with the least disruptive effect on trade, such as "price-based measures".

2. During the 2015 consultation with Ecuador, Members questioned the manner in which Ecuador had applied a balance-of-payment measure regarding, in particular, different surcharge rate levels.¹ In the 2015 consultation with Ukraine, Members questioned the rationale behind a differentiated application of the balance-of-payments measure and the reasons for a higher surcharge on agricultural goods as compared to the surcharge on industrial products.²

1.1.2.2 Paragraph 3

3. During the 2009-2010 consultation with Ecuador, Members requested the immediate elimination of the quantitative restrictions that Ecuador had applied on 271 tariff lines.

1.1.2.3 Paragraph 4

4. In paragraph 4 Members confirm that restrictive import measures taken for balance-of-payments purposes may only be applied to control the general level of imports and may not exceed what is necessary to address the balance-of-payments situation.

5. During the 2015 consultation with Ecuador, Members questioned why Ecuador had applied the balance-of-payment measure to a limited number of tariff lines and had excluded some WTO Members from its scope.³ The same issue had been raised in the 2009 consultations with Ecuador and Ukraine.⁴

1.1.3 Invocation and disinvocation of measures taken for balance-of-payments purposes

6. Invocations and disinvocations of Articles XII and XVIII:B of the GATT 1994 undertaken between 1995 and 2017 are shown in the table set forth in the Annex to this document.⁵

1.1.4 Committee on Balance-of-Payments Restrictions

1.1.4.1 Paragraph 5: Membership

7. Membership of the Committee is open to all Members indicating their wish to serve on it. At its meeting on 28 July 2009, the General Council took a decision with respect to participation in the meetings of the Committee on Balance-of-Payments Restrictions.⁶ All Members and any future WTO Members are deemed to have communicated to the Director-General their wish to serve as a member of the Committee on Balance-of-Payments.

¹ [WT/BOP/R/114](#).

² [WT/BOP/R/110](#).

³ [WT/BOP/R/114](#).

⁴ [WT/BOP/R/91](#) and [WT/BOP/R/93](#).

⁵ See pages 394-395 of the *GATT Analytical Index* for details of BOP consultations from 1979 through 1994.

⁶ [WT/GC/M/121](#), para 66; and [WT/L/767](#).

1.1.4.2 Paragraph 13: Conclusions on Balance-of-Payments Consultations

8. In their consultations with Ecuador in 2015, Members were divided with respect to the effectiveness of the measure adopted by Ecuador to correct its balance-of-payments deficit, as well as with respect to the WTO-consistency of the measure.⁷ In their consultations with Ukraine, also in 2015, the majority of Members considered that Ukraine had applied the measure in a WTO-consistent manner. One Member considered that Ukraine's measure was not justified by the balance-of-payments provisions of the GATT 1994.⁸

⁷ See [WT/BOP/R/114](#).

⁸ See [WT/BOP/R/110](#).

ANNEX

INVOCATIONS AND DISINVOCATIONS OF ARTICLES XII AND XVIII:B BETWEEN 1995 AND 2020

Member	Consultations	Measures	References
Bangladesh (Art. XVIII:B)	1995(S), 1997 (S), 1999(S), 2000, 2001, 2002, 2004, 2007	QRs remained on a few items as of 2007; remaining items liberalized 2007-10	BOP/R/223 ; WT/BOP/R/28 , 42 , 46 , 50 , 57 , 58 , 60 , 64 , 76 , 86 , 94 ; WT/BOP/N/54 , 60 , 61 , 62 , 63 , 64 , 73 ; WT/BOP/S/1 , 9 , 12 , 13 , 14
Brazil (Art. XVIII:B)	1995	Import quota on motor vehicles introduced June 1995, eliminated effective 27 October 1995	WT/BOP/R/7 ; WT/BOP/N/4 ; WT/GC/M/8
Bulgaria (Art. XII)	1997, 1998	5% import surcharge introduced Jun. 1996, reduced 1998, eliminated Jan. 1999	WT/BOP/R/34 , 43 ; WT/BOP/N/18 , 30 , 37 , 38
Czech Republic (Art. XII)	1997	Import deposit scheme introduced Apr. 1997, eliminated Aug. 1997, Art. XII disinvoked	WT/BOP/R/30 , 33 , 38 ; WT/BOP/N/19 + Add.1 , 29
Ecuador (Art. XVIII:B)	2009, 2010	QRs applied in 2009, gradually replaced by price-based measures 2009; all BOP measures removed Jul. 2010	WT/BOP/R/91 , 94 , 97 , 98 + Corr.1 , 99 , 100 ; WT/BOP/N/65 + Add.1 , 67 , 69 , 70 , 72 , 74 , 75 , 76 , 77 ; WT/BOP/S/15/Rev.1
Ecuador (Art. XVIII:B)	2009, 2010	Trade measures applied to 630 HS subheadings: (a) tariff increase of 30 or 35% on 75 HS tariff subheadings); (b) specific tariff on 284 subheadings; QRs on 271 subheadings. Measures introduced in March 2009; removed in June 2010.	WT/BOP/R/92 and Rev.1 ; WT/BOP/N/65 and Add.1 ; WT/BOP/N/67 , 69 , 70 , 72 , 73 , 74 , 75 , 76 , 77 ; WT/BOP/S/15 ;
Ecuador (Art. XVIII:B)	2015, 2016, 2017	Tariff surcharge applied to 2,955 10- digit lines, or 38% of a total of 7,581 tariff lines. Surcharge applied at <i>ad valorem</i> rates of 5%, 15%, 25% and 45%. Measures introduced	WT/BOP/R/114 ; WT/BOP/N/79 , Add.1 , and Add.2 ; WT/BOP/N/81 , 82 , 83 , 84 ; WT/BOP/S/18 .

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		in March 2015; removed in June 2017.	
Egypt (Art. XVIII:B)	1995(S)	Disinvoked Article XVIII:B as from 30 June 1995	BOP/R/225 ; BOP/324 ; BOP/W/161
Hungary (Art. XII)	1995, 1996	Import surcharge introduced March 1995, reduced in 1996, eliminated July 1997	WT/BOP/R/3 , 17 , 20 , 30 , 38 ; WT/BOP/N/2 , 12 , 17 , 23 , 26
India (Art. XVIII:B)	1995, 1997	Discretionary import licensing	WT/BOP/R/11 , 22 , 32 ; WT/BOP/N/11 , 24 ; WT/DS90/R ; WT/DS90/AB/R
Israel (Art. XVIII:B)		Disinvoked BOP provisions Sept. 1995	WT/BOP/R/5 ; WT/BOP/N/3
Nigeria (Art. XVIII:B)	1996, 1997, 1998	Import prohibitions	WT/BOP/R/13 , 18 , 25 , 35 , 41 ; WT/BOP/N/20 , 27 , 32 , 44 , 45
Pakistan (Art. XVIII:B)	1997, 2000	QRs invoked 1997; phased out 2002	WT/BOP/R/27 , 36 , 39 , 51 , 56 ; WT/BOP/N/14 , 31 , 40 , 51 , 53 , 57 , 59
Philippines (Art. XVIII:B)	1995(S)	QRs since GATT accession in 1980; eliminated on most agricultural products 1996	BOP/312 + Add.1 + Add.1/Rev.1 , WT/BOP/W/10 ; WT/BOP/R/9 , WT/BOP/N/9
Poland (Art. XII)	1995	Import surcharge introduced Dec. 1992, eliminated 1 Jan. 1997	BOP/R/228 ; WT/BOP/R/16 ; WT/BOP/N/6 , 8 , 16
Romania (Art. XII)	1999, 2000	Import surcharge introduced Oct. 1998, eliminated Jan. 2001	WT/BOP/R/45 , 49 , 53 ; WT/BOP/N/41 , 42 , 48 , 50 , 56
Slovak Republic (Art. XII)	1995, 1997, 1999, 2000	Import surcharge introduced 1994, reduced July 1996, eliminated 1 Jan. 1997, reintroduced Aug. 1997, abolished Oct. 1998; import surcharge introduced June 1999 abolished Jan. 2001	WT/BOP/R/4 , 15 , 24 , 30 , 36 , 40 , 48 , 49 , 52 ; WT/BOP/N/1 , 15 , 21 , 28 , 33 , 35 , 39 , 46 + Add.1 and Add.2 , 47 , 49 , 52 , 55
South Africa (Art. XVIII:B)	1995	Import surcharge removed Oct. 1995; disinvoked BOP provisions Oct. 1995	WT/BOP/R/1 ; WT/BOP/N/5

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Sri Lanka (Art. XVIII:B)	1995	Import licensing; partially liberalized 1996. Art. XVIII:B disinvoked May 1998	WT/BOP/R/8 ; WT/BOP/N/13 , 36
Tunisia (Art. XVIII:B)	1996	QRs on motor vehicles; liberalization completed 2001	WT/BOP/R/14 , 31 ; WT/BOP/S/2 ; WT/BOP/N/10 , 25 , 34 , 43 , 58
Turkey (Art. XVIII:B)	1995(S)	Import charges pre- dating WTO; eliminated 1 Jan. 1997	WT/BOP/R/6 , 16 ; WT/BOP/4 ; WT/BOP/W/6 ; WT/BOP/N/7 , 22
Ukraine (Art. XII)	2009	15% import surcharge on some products for up to 6 months, introduced Mar. 2009, discontinued Sept. 2009	WT/BOP/R/93 , 94 ; WT/BOP/N/66 , 68 , 71 ; WT/BOP/S/16
Ukraine (Art. XII)	2015	10% import surcharge for goods classified in groups HS 1-24; 5% for goods classified in HS 25-97; and 10% for goods imported by nationals into Ukraine. Introduced 25 Feb. 2015, discontinued 31 Dec. 2015.	WT/BOP/R/110 ; WT/BOP/N/78 + Add.1 ; 80 ; WT/BOP/S/17

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