

GENERAL AGREEMENT ON TARIFFS AND TRADE

CONFIDENTIAL

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Special Distribution

Multilateral Trade Negotiations

NOTE BY THE SECRETARIAT

It is the understanding of the secretariat that the attached text reflects the present state of thinking of certain delegations on balance-of-payments questions.

It is circulated in order to facilitate further discussions and negotiations.

DRAFT UNDERSTANDING REGARDING SAFEGUARD ACTIONS FOR BALANCE-OF-PAYMENTS PURPOSES

A

Use of trade measures for balance-of-payments purposes: general

1. The contracting parties recognize that, as a general matter, trade measures are not a preferred means of addressing balance-of-payments problems. Accordingly, developed contracting parties undertake to the maximum extent possible to avoid the imposition of trade measures for balance-of-payments purposes.
2. The contracting parties recognize the special balance-of-payments difficulties of many developing countries and agree that the ability of such countries to avoid the use of trade measures for balance-of-payments purposes is more limited than it is for most developed countries.
3. Subject to paragraphs 1 and 2 above, the contracting parties agree that when in the exceptional circumstances contemplated in GATT Articles XII and XVIII:B, the imposition of trade measures cannot be avoided, such measures should be:
 - (a) maintained only for so long as absolutely essential to deal with the balance-of-payments problems, attenuated as the balance-of-payments situation improves, and eliminated when conditions no longer justify their maintenance;

- (b) non-discriminatory in nature, without prejudice to other GATT provisions, and otherwise designed to minimize trade-restrictive and/or trade-distorting effects; in this connexion measures which affect value are to be preferred over those which affect quantity;
 - (c) as simplified as possible (i.e., a multiplicity of measures should be avoided);
 - (d) designed not to impair regular channels of trade and to avoid unnecessary prejudice to the trade interests of other countries, particularly where important export interests of developing countries are concerned; and
 - (e) otherwise consistent with paragraphs 2 and 3 of Article XII or, if taken by a developing country, with paragraphs 9-12 of Article XVIII
4. A balance-of-payments measure should not be used to protect a particular industry or sector.

B

Use of trade measures for balance of payments by developing countries

1. The contracting parties agree that, notwithstanding the provisions of paragraph 1 of Article II, each contracting party which is enabled by paragraph 9 of Article XVIII to regulate the general level of its imports may institute, in place of restrictions applied in accordance with Article XVIII, surcharges or prior import deposits applying to products which are the object of concessions contained in the corresponding schedules annexed to the GATT, and exceeding the rates specified in those schedules, subject to the following procedures and conditions:

- (a) surtaxes or deposits should be applied within the context of a general measure or a series of measures which should not exceed the limits established in paragraph 9 or Article XVIII;
- (b) application of surtaxes or deposits should be subject to the conditions, limitations and procedures stipulated in paragraphs 10, 11 and 12 of Article XVIII;
- (c) surtaxes or deposits should be applied in a uniform manner, and only for large product categories; and
- (d) surtaxes or deposits should be instituted in a manner compatible with Article I, without prejudice to other GATT provisions.

C

GATT review of trade measures taken for balance-of-payments purposes

1. Contracting parties should notify promptly to the GATT any new trade measures taken for balance-of-payments purposes, or any significant changes in the level of existing restrictions.
2. If a contracting party does not notify such measures within a reasonable period, the GATT secretariat may seek appropriate information from that party, if requested to do so by an interested contracting party; alternatively, any contracting party may notify to the GATT any trade measure which it has reason to believe was taken for balance-of-payments purposes by any other contracting party.
3. Notified trade measures for balance-of-payments purposes should be subject to prompt multilateral review in consultations with the contracting parties. Such review should be undertaken by the GATT Committee on Balance-of-Payments Restrictions.
4. In connexion with such review (and with reference to document L/3388), the following elements should be considered:
 - (a) the nature of the balance-of-payments difficulties of the contracting party applying the notified measures, the operation of the measures, their conformity with the GATT and the provisions of this understanding, and, if warranted, the scope for alternative corrective measures (or adjustments to the notified measures) which might reduce distortions to international trade;
 - (b) the limitations that might exist with respect to the flexibility of the contracting party to adjust to disturbances in the international economy;
 - (c) any commercial implications, falling within the province of the GATT, of associated non-trade measures taken to remedy the balance-of-payments difficulties.
5. Review procedures do not prejudice the legal rights of any contracting party to question the GATT consistency of a balance-of-payments trade measure and in no way preclude recourse under appropriate GATT provisions.
6. To facilitate the review process, the GATT secretariat should undertake to provide, with the co-operation of the interested parties and drawing on all appropriate sources of information, a description and objective study of trade aspects of the measures under review, including their effect on less-developed contracting parties.

7. In order to provide technical assistance to developing countries, the GATT secretariat may be requested to collaborate with the authorities of a developing contracting party (in appropriate cases, by sending a representative to its capital) in preparing the basic documentation for the consultation.

D

Simplified procedures for GATT review of balance-of-payments trade measures

1. Contracting parties reaffirm the existing procedure (as provided in L/3772/Rev.1) establishing the possibility that in particular cases the BOP Committee may decide to provide, in lieu of a "full consultation", simplified procedures for the consulting developing country; this possibility would apply especially in the case of countries which are inadequately equipped administratively to deal with the requirements of a full consultation.
2. With respect to periodic consultations with developing countries under Article XVIII:12(b), the Committee will examine each particular case in order to determine if a simplified consultation would suffice; the Committee's determination will be on the basis of objective factors (e.g., time elapsed since previous full consultation; whether new measures have been introduced; changes in the nature or the level of previous restrictions; whether action has been taken in the light of previous recommendations of the Committee) and will draw on appropriate sources of information (documentation of the IMF, notifications to GATT, official publications, etc.) so as to assess the BOP problems of the developing country under consideration, the régime and techniques of restrictions that it is applying, the prospects for liberalization, etc. Under this procedure, the developing country would not need to present the customary "basic document" prior to the Committee's decision regarding the need for a full consultation (although such developing country would not be precluded from presenting any material it considers relevant or necessary).
3. If the Committee decides that the simplified procedure is not appropriate in a given case, the GATT secretariat, in the context of its technical assistance to developing countries, will collaborate with the authorities of the particular developing country in preparing a basic document for the consultation concentrating on commercial policy (factual analysis of the BOP trade measures taken, techniques of restriction, compositional factors in the payments situation, GATT bindings affected, etc.). Such analysis would complement documentation furnished by the IMF dealing with economic and financial aspects of the consulting country's balance-of-payments situation.

EResults of review and follow-up

1. Conclusions reached in the consultation/review process should be reported, together with some narrative discussion containing a clear statement of the reasons for any conclusions.
2. Where the BOP Committee has, as part of its conclusions, recommended alternatives or adjustments to a balance-of-payments trade measure, the contracting party applying the measure should, as soon as practicable, report in writing to the BOP Committee what steps it has taken in the light of such recommendations. If the contracting party has not so reported within a reasonable period after completion of the review, any interested party may request the BOP Committee to examine the implementation of its recommendations.
3. The BOP Committee should undertake to review periodically those balance-of-payments trade measures remaining in force, with a view to ensuring that they are being maintained in conformity with the GATT and the provisions of this understanding.