

GENERAL AGREEMENT ON TARIFFS AND TRADE

CONFIDENTIAL

MTN/INF/25/Rev.1

29 June 1978

Special Distribution

Multilateral Trade Negotiations

NOTE BY THE SECRETARIAT

Revision

This paper is being circulated by the secretariat on its own responsibility in order to try to facilitate the negotiations on this subject.

Draft Declaration on Trade Measures Taken for Balance-of-Payments Purposes

The CONTRACTING PARTIES,

Having regard to the provisions of Articles XII and XVIII of the General Agreement;

Recalling the procedures for consultations on balance-of-payments restrictions approved by the Council on 28 April 1970 (BISD, Eighteenth Supplement, pages 48-53) and the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 (BISD, Twentieth Supplement, pages 47-49);

Convinced that restrictive import measures are in general an inappropriate means to maintain or restore balance-of-payments equilibrium;

Recognizing that restrictive import measures other than quantitative restrictions have been used for balance-of-payments purposes;

Recognizing that less-developed contracting parties often have balance-of-payments problems of a structural nature and difficulties in avoiding the use of restrictive import measures to maintain or restore balance-of-payments equilibrium;

Recognizing that the impact of trade measures taken by developed countries on the economies of developing countries can be serious;

Agree as follows

1. The developed contracting parties affirm their resolve to avoid introducing or intensifying restrictive import measures for balance-of-payments purposes.

2. Notwithstanding the provisions of Article II of the General Agreement and without prejudice to the other provisions of the General Agreement, contracting parties may apply, for balance-of-payments purposes, apart from quantitative restrictions, other restrictive import measures. The criteria and procedures stipulated in Article XII and XVIII shall apply to all restrictive import measures taken for balance-of-payments purposes.

3. The application of restrictive import measures taken for balance-of-payments purposes shall be subject to the following conditions in addition to those provided for in Articles XII and XVIII:

- (a) In choosing between various types of restrictive import measures, contracting parties shall give preference to the type of measure which has the least disruptive effect on trade.
- (b) The simultaneous application of more than one type of trade measure shall be avoided to the extent practicable.
- (c) The contracting parties shall endeavour to avoid that restrictive import measures taken for balance-of-payments purposes stimulate new investments that would not be economically viable in the absence of the measures. Whenever practicable, contracting parties shall therefore publicly announce a time schedule for the removal of the measures.

The extent to which the realization of the above additional conditions by less-developed contracting parties is practicable depends on their development, financial and trade situation.

4. Without prejudice to the provisions of Articles XII:3(b) and XVIII:10, no restrictive import measure taken for balance-of-payments purposes shall be used for the purpose of protecting a particular industry or sector.

5. If a developed contracting party is compelled to apply restrictive import measures for balance-of-payments purposes notwithstanding paragraph 1 of this Declaration, it shall, in determining the incidence of its measures on imports of different products or classes of products, take into account the export interests of the less-developed contracting parties. The developed contracting parties may exempt the less-developed contracting parties from their restrictive import measures taken for balance-of-payments purposes to the extent that this is feasible without frustrating the purpose of the measures.

6. Contracting parties shall promptly notify to the GATT the introduction or intensification of all restrictive import measures taken for balance-of-payments purposes. Contracting parties which have reason to believe that a restrictive import measure applied by another contracting party was taken for balance-of-payments purposes may notify the measure to the GATT or may request the GATT secretariat to seek information on the measure and to make it available to all contracting parties if appropriate.

7. All restrictive import measures taken for balance-of-payments purposes shall be subject to consultation in the GATT Committee on Balance-of-Payments Restrictions (hereafter referred to as "Committee").

8. The membership of the Committee is open to all contracting parties indicating their wish to serve on it. Efforts shall be made to ensure that the composition of the Committee reflects as far as possible the characteristics of the contracting parties in general in terms of their geographical location, external financial position and stage of economic development.

9. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved by the Council on 28 April 1970 and set out in BISD, Eighteenth Supplement, pages 48-53, (hereinafter referred to as "full consultation procedures") or the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 and set out in BISD, Twentieth Supplement, pages 47-49, (hereinafter referred to as "simplified consultation procedures") subject to the provisions set out below.

10. The GATT secretariat, drawing on all appropriate sources of information, including the consulting contracting party, shall with a view to facilitating the consultations in the Committee prepare a factual background paper describing the trade aspects of the measures taken, including aspects of particular interest to less-developed contracting parties. The paper shall also cover such other matters as the Committee may determine. The GATT secretariat shall give the consulting contracting party the opportunity to comment on the paper before it is submitted to the Committee.

11. In the case of consultations under Article XVIII:12(b) the Committee shall decide whether simplified or full consultation procedures are to apply in the light of factors such as the following:

- (a) the time elapsed since the last full consultations;
- (b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;

- (c) the changes in the overall level or nature of the trade measures taken for balance-of-payments purposes;
- (d) the changes in the balance-of-payments situation or prospects.

12. A less-developed contracting party may at any time request full consultations. As provided for in paragraph 3 of the full consultation procedures, a less-developed contracting party may at any time request expanded consultations in which particular attention is given to the possibilities for alleviating and correcting the balance-of-payments problem through measures that contracting parties might take to facilitate an expansion of the export earnings of the consulting contracting party.

13. The technical assistance services of the GATT secretariat shall, at the request of a less-developed consulting contracting party, assist it in preparing the documentation for the consultations.

14. The Committee shall report on its consultations to the Council. The reports on full consultations shall indicate:

- (a) the Committee's conclusions as well as the facts and reasons on which they are based;
- (b) the steps the consulting contracting party has taken in the light of previous conclusions of the Committee; and,
- (c) in the case of less-developed contracting parties, the facts and reasons on which the Committee based its decision to apply full consultation procedures.

15. If the Committee finds that a restrictive import measure taken by the consulting contracting party for balance-of-payments purposes is inconsistent with the provisions of Articles XII and XVIII:B or this Declaration, it shall, in its report to the Council, make such findings as will assist the Council in making a recommendation for the removal or suitable modification of the measure within a specified period. If the Council makes such a recommendation, the consulting contracting party shall, within the period specified by the Council, report on the steps it has taken to implement the recommendation. After the period specified by the Council, the Committee shall consult with the contracting party on the implementation of the recommendation and report to the Council.

16. If the Committee finds that the consulting contracting party's measures

- (a) are a consequence of a recent restrictive trade measure by another contracting party, or
- (b) have a significant adverse impact on the export interests of a less-developed contracting party,

it shall so report to the Council which shall take such further action as it may consider appropriate.