

**MULTILATERAL TRADE  
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THE URUGUAY ROUND**

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COMMUNICATION FROM EGYPT

The following communication, dated 22 October 1987, has been received from the delegation of Egypt with the request that it be circulated to members of the Group.

STATEMENT BY EGYPT ON GATT ARTICLES RELATED TO TRADE RESTRICTIONS  
TAKEN FOR BALANCE-OF-PAYMENTS PURPOSES

1. There were some views expressed in the Negotiating Group on GATT Articles to the effect that there is a need to review GATT Articles related to trade restrictions taken for balance-of-payments purposes, namely Articles XII, XIV, XV and XVIII. There was also a specific proposal submitted by the United States in this regard contained in document MTN.GNG/NG7/W/7.
2. It can be clearly noted that such views are based on the following arguments:
  - (a) There are changes that have taken place in the international monetary system since GATT balance-of-payments Articles were revised in 1955 (most important of which is the changeover from fixed to floating exchange rate régime).
  - (b) GATT BOP Articles, therefore, need to be reviewed in the light of such changes.
  - (c) Present GATT rules lead to permanent trade restrictive measures in the case of developing countries invoking Article XVIII(B) as its provisions are cast in structural terms.
  - (d) Some countries use Article XVIII(B) to protect specific industries at the same time as they safeguard their balance-of-payments.
  - (e) Some developing countries use Section (B) of Article XVIII, instead of using Sections (C) and (D) to protect infant industries and thereby avoiding the question of compensation.

Furthermore, additional following procedural problems are cited as reasons for the review of the provisions of GATT BOP Articles:

- A - Many countries do not notify restrictions they take for BOP reasons.
- B - Consultations are often delayed.
- C - The BOP Committee appears to have limited authority to pressure the elimination, or phasing out, of trade restrictions.

3. To appreciate clearly the implications of such proposals, it is necessary to note briefly the GATT rules which govern the use of trade restrictions by countries in BOP difficulties.

4. The main provisions relating to the use of trade restrictions for BOP reasons are contained in Article XII and XVIII(B). Until 1955 the provisions of Article XII applied to all countries, both developed and developing. During the 1955 Review Session, however, Section B was added to Article XVIII to provide a greater degree of flexibility to developing countries. The main differences between Article XII, which now applies to developed countries, and Article XVIII(B), which applies to developing countries, are three. Firstly, while Article XII assumes that the BOP problems of developed countries would be of a temporary and cyclical nature, Article XVIII(B) recognises that developing countries encounter balance-of-payments problems which are of a persistent and structural nature, mainly because, on the one hand, their demand for imports continues to rise as a result of the implementation of their programmes of development and, on the other, their export receipts do not rise because of the instability of their terms of trade. Secondly, Article XVIII(B) lays down less stringent criteria than Article XII for the invocation of balance-of-payments provisions by, inter alia, stating that developing countries could impose trade restrictions on imports when the reserves are considered to be "inadequate", while provisions of Article XII can be invoked only in cases where monetary reserves are considered to be "very low". Thirdly, the developing countries invoking the provisions are expected to consult every second year in the BOP Committee, while the countries which invoke the provisions of Article XII are required to consult in the BOP Committee every year.

5. It should be noted that the provisions of Article XII and XVIII recognise that there is a close link between trade policies, on the one hand, and fiscal and monetary policies which countries follow, on the other, so that it may be possible for countries to reduce their dependence on trade restrictive measures by pursuing appropriate domestic policies. Because of these provisions, in the regular consultations, which are held periodically with countries in balance-of-payments difficulties, the BOP Committee examines the "alternative policy measures", which the country has been pursuing to reduce its dependence on trade restrictions. Both the Articles, however, recognise that the ultimate decision on the macro-economic policies which the consulting countries should follow would

have to be left to the country concerned and both Articles lay down the principle that no country would be required to make changes in its domestic policies, on the grounds that such modifications in the policies "would render unnecessary restrictions it is applying".

6. The main reasons which have been advanced for reviewing these provisions of Article XVIII(B) is that the changes which have taken place in the international monetary system, particularly the changeover from fixed to floating exchange rates, no longer justify provisions in GATT which permit the use of trade restrictions for balance-of-payments reasons.

7. Before turning to the consideration of the economic validity of these arguments, it is necessary to emphasise that the GATT provisions applicable in this area, particularly those of Article XII and XVIII, and the procedures followed for consultations in the BOP Committee by countries invoking these provisions, were reviewed thoroughly during the Tokyo Round, when the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes was adopted. One of the main issues which was discussed was whether any basic change was required to be made in the GATT balance-of-payments provisions as a result of the demise of the fixed exchange rate system at the beginning of the seventies, and the adoption by major trading nations of widely differing exchange rate systems which gave them freedom to allow par-value of their currencies being determined by floating them in currency markets.

8. The predominant view of the majority of the developed countries and of the developing countries at that time was that the changes which had taken place in the monetary system did not warrant any basic modifications being made in the GATT BOP provisions. It was, however, agreed that, in addition to the provisions in Articles XII and XVIII, which emphasise that the countries should not rely on trade restrictive measures alone for achieving payments equilibrium, the Declaration should emphasise that "restrictive trade measures are in general an inefficient means to maintain or restore balance-of-payments equilibrium". The Declaration further urges all countries not to use restrictive import measures, for which BOP provisions are invoked, "for the purpose of protection of a particular industry or sector". These provisions apply to both developed and developing countries.

9. While it is recognised by all Contracting Parties, whether developed or developing, that trade restrictions taken for balance-of-payments purposes are in general inefficient in solving BOP problems it should be noted that such restrictions are more often the result of such problems than remedies to them.

10. Given the circumstances, it would appear that a case for reform of the provisions of Article XVIII:B could be made only if it is established that the experience from the operation of the floating exchange rates system over the last seven years, i.e. since the 1979 GATT Declaration on Trade Measures Taken for BOP Purposes was adopted, is such as to warrant having a

fresh examination of these provisions. In our view this does not seem to be the case. It is now widely accepted that most of the system-improvements expected to result from the shift to flexible exchange rates have not materialised. For instance, contrary to the expectation, that under the flexible exchange rate system the currency rates will respond quickly to international differences in inflation rates, as well as to structural changes of various kinds, we can all see that exchange rates have remained misaligned over long periods of time. Further, the expectations that the flexible exchange rate system would provide an automatic mechanism for adjustment in current account imbalances have been disappointed. In fact, the adoption of the floating exchange rate system has been accompanied by chronic current account imbalances among major trading nations.

11. Also the expectations that the adoption of the flexible exchange rates would eliminate the need on the part of developed countries to take trade restrictive measures have been disappointed. In fact, it is well known that the period since the introduction of the flexible exchange rates has witnessed a significant rise in protective measures in almost all developed countries. As many of such measures have been taken in the form of export restraint arrangements, or other grey area measures, it has been possible for countries to resort to protective measures by circumventing GATT law. Though many of these grey area measures taken in recent years are mainly due to the structural problems which industries in importing countries are facing, in meeting import competition, it cannot be denied that the protective pressures on governments have been the highest in countries where currencies have remained misaligned over extended periods of time and the current accounts are in deficit.

12. As far as developing countries are concerned, their experience with the floating exchange rate system was not a fortunate one. Since most of them have pegged their currencies to major developed country currencies (US Dollar, French Franc or a basket of currencies) exchange rate fluctuations usually occur due to external factors related to the peg currencies over which developing countries would have no control.

13. Since future exchange markets, through which the risk of exchange rate fluctuations could be covered, are almost absent in most of the developing countries, the need has increased for more reserves to finance temporary payments imbalances.

14. It is rather evident that the cost of exchange rates instability was quite high for developing countries particularly in the light of the unfavourable external environment facing them, which was characterised by deteriorating terms of trade, rising debt service obligations and the increasing negative transfer of resources from developing countries.

15. In the light of the above mentioned factors, it is rather clear that the floating exchange rates system has added to the pressure of BOP problems faced by developing countries rather than increased their ability to deal with them.

16. Given that background it could hardly be suggested that the changes which have taken place in the international monetary field have in any way altered the nature of BOP problems facing developing countries. As recognised in the provisions of Article XVIII they are still of a structural and persistent nature due to the increasing demand for imports needed for the implementation of development programmes, and the instability in the developing countries terms of trade.

17. Section (B) of Article XVIII sets certain criteria for the invocation of its provisions and it is the task of the BOP Committee to see that such criteria are being met. Therefore the suggestion that some countries use section (B) instead of using sections (C) or (D) of Article XVIII does not merit the need to review the provisions of this Article.

18. As far as what is referred to as procedural problems, it would be relevant to clarify the following points:

- (a) To simply suggest that GATT rules are not being adhered to could hardly constitute a basis to renegotiate such rules.
- (b) Some of the problems referred to are related to the functioning of the BOP Committee rather than to the rules themselves, therefore the review does not seem to be justified.
- (c) Since the procedural aspects of the surveillance carried out by the BOP Committee should always be related to the nature of BOP problems facing developing countries i.e. being problems of structural long-term nature and since this nature of those problems has not changed since the adoption of the 1979 Declaration, therefore there would seem to be no reason for which such procedure should be reviewed.

19. It would be extremely important while commenting on the proposals for review to point out how far they affect the application of the principle of differential and more favourable treatment for developing countries. If we take a quick look at the components of such principle that lie in the General Agreement it is evident that Article XVIII (particularly Section B) represents the important operative part.

20. To explain this a little bit further it may be pointed out that the concept of special and differential treatment has two faces, the first, calls on developed countries to take special measures in favour of developing countries, the provisions of which are contained mainly in Part IV of the General Agreement, and we all know how little developing countries have gained out of such "soft law" provisions. The second face of the differential and more favourable treatment provides developing countries with a certain degree of flexibility in accepting obligations under the GATT law, and that is where developing countries can have a breathing space and the provisions which provide this flexibility are those of Article XVIII, particularly section (B), which gives developing countries flexibility to use import restriction for balance-of-payments purposes.