

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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COMMUNICATION FROM ARGENTINA

The following communication, dated 4 February 1988, has been received from the delegation of Argentina with the request that it be circulated to members of the Group.

COMMUNICATION FROM THE DELEGATION OF ARGENTINA  
FOR THE NEGOTIATING GROUP ON GATT ARTICLES

ARTICLE XXI

I. As mentioned in the document prepared by the GATT secretariat (MTN.GNG/NG7/W/16), this Article has been invoked a number of times in trade disputes within GATT.

Various contracting parties have invoked it to justify trade measures applied for political reasons, in particular against developing contracting parties (see document MTN.GNG/NG7/W/16, pages 5, 6 and 7).

II. The discussions in the GATT Council on this subject and the difficulty in settling the cases raised are evidence of the differing interpretations that exist with regard to the implementation of some of the Article's provisions.

Experience has shown that there is no restriction on the unilateral interpretation of the contracting party invoking its provisions, which creates a legal gap that will have to be studied and resolved during the current Round of Negotiations.

III. The present Article XXI has no relationship with the arrangements devised in the framework of the Havana Charter.

If we refer to the background to the drafting of the Havana Charter, we may see, on the basis of the information circulated by the secretariat and other evidence, that in the draft of that Charter there was a close link between the provisions of Article 94 (subsequently 99), "Security Exceptions", and those of Article 86, "Relations with the United Nations".

The discussions that took place during the consideration of the scope of the exceptions (see, in particular, document E/CONF.2/C.6/SR.37, pages 1-5) show that the issue of economic and trade measures that can be taken under these exceptional provisions was discussed at length.

It is also clear, however, that if a matter was submitted to the United Nations on the grounds that it was considered political, it would fall outside the jurisdiction of the trade organization.

In the light of the provisions of Articles 86 and its Interpretative Notes (see paragraph 7 of the secretariat document) certain conditions had to be met if a matter (or measures) were to be considered by the United Nations. The first was that the question or measure should be brought before the United Nations. The second was that it should be in conformity with the provisions of Chapters IV or VI of the Charter of the United Nations (see clarification by the Chairman of Sub-Committee I to the Cuban delegation, document E/CONF.2/C.6/104). Finally, the issue had to be political in nature.

Nevertheless, on the basis of the Interpretative Notes to Article 86, the Organization had responsibility for making a determination when specific measures were questioned by members (Note 1 to Article 86, paragraph 3) and also for attending to disputes submitted by parties (Interpretative Note 2 to Article 86, paragraph 3).

In sum, a balance was assumed between the respective rôles of the Organization and the United Nations, starting from the assumption that, in one forum or the other, a solution would be found to the matter raised by a party.

IV. Suggestions were made with a view to clarifying the links between Articles 94 (99) and 86, in particular the proposal by Australia (see document E/CONF.2/C.6/SR.37) according to which any decision taken by the Organization would be based on a recommendation by the United Nations.

V. The background information available indicates that:

- (a) The possibility that trade measures might be taken by virtue of security exceptions under the provisions of the Havana Charter was extensively considered.
- (b) A text was drafted establishing a balance on the basis of Articles 86 and 99, in which functions were maintained for the Organization (Interpretative Notes to Article 86, paragraph 3).
- (c) Some parties considered those guarantees unsatisfactory, in particular Australia and Sweden (document E/CONF.2/C.6/SR.37, pages 3 and 4), and others rejected the possibility of applying trade measures for political reasons.

VI. In order to avoid future uses of Article XXI that could continue to undermine the functioning of the General Agreement, the Negotiating Group may consider two options:

- (a) To draft an Interpretative Note restoring the original link between Articles 86 and 99.
- (b) To interpret certain terms of the provisions of Article XXI(b)(iii) in such a way as to limit possible arbitrariness.

Such terms would include: (1) protection of essential security interests; and (2) time of war or other emergency in international relations.

VII. Another aspect of imbalance in this Article, to which consideration should be given, and which was highlighted when Article XXI was invoked against Argentina and then Nicaragua, is that the trade measures adopted under Article XXI do not leave any effective retaliation by the developing country affected, owing to the latter's limited commercial power. This facilitates the use of these provisions against economically weaker countries.

The future provisions should therefore be strengthened so as to take account of the existing imbalance, by ensuring suitable legal protection for developing or commercially weaker contracting parties.