

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Negotiating Group on GATT Articles

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 15 July 1988, has been received from the delegation of the European Communities with the request that it be circulated to members of the Group.

STATEMENT OF THE EUROPEAN COMMUNITIES ON THE  
BALANCE-OF-PAYMENTS ARTICLES MADE AT THE  
EIGHTH MEETING OF THE GROUP (27-30 June 1988)

1. In November last year, the European Communities presented a communication to the Group (NG7/W/37) supporting the review of Articles XII, XIV, XV and XVIII of the General Agreement. We therefore welcome the opportunity to have an exchange of views on the substantive issues involved. It is our hope that a productive discussion will help to clarify and dispel concerns that have been expressed about the justification and scope of the proposed review of these provisions.
2. If the GATT is to be made more responsive to the evolving international economic environment, there is a need to ensure that GATT rules and disciplines maintain a dynamic relationship with the evolution of the international monetary system. It is not our view that the task of this Group is to call into question the fundamental principles for the application of the GATT's BOP Articles, as they have evolved over time. Articles XII and XVIII:B are already based on the concept that trade restrictions should be strictly temporary and should not substitute for the necessary adjustment efforts. Moreover, the risk that trade restrictions could actually make the adjustment process more difficult was taken into account when strict criteria for the application of trade restrictions were set out. At the same time, it is clear that the experience which has been gained since the conclusion of the Tokyo Round both as regards the process of balance of payments adjustment and the operation of GATT provisions, should provide the basis for a process of review.
3. As has been noted in our communication, the principal justification for temporary trade restrictions, under the Bretton Woods System, was to facilitate adjustment while domestic policy measures or a change in par values took effect. The rules of the international monetary system have evolved in order to better affirm the principle that balance of payments equilibrium should be achieved through a combination of exchange rate

adjustment and appropriate internal measures. The efficient functioning of the international monetary system requires the avoidance of excessive instability and misalignment of exchange rates. At the same time, sufficient flexibility is needed so that exchange rates are in line with economic fundamentals, thereby avoiding the negative effects of the prolonged use of trade restrictions. Indeed, these concepts do not represent any change in the philosophy of GATT rules, but rather a reaffirmation of basic principles in the light of both the rules and the practical experience under the international monetary system.

4. On the basis of these elements, there appears to be, in general, little justification for the use, by countries that have achieved a high level of development, of trade restrictions as a response to balance of payments problems. In the case of developing countries, the European Community has repeatedly acknowledged the seriousness of the balance of payment difficulties experienced by a number of countries, in particular those with a high level of indebtedness. The rationale for accepting that trade restrictions may have a limited rôle to play in that case is the need, for a longer time-frame for adjustment when economies are at low levels of development. In these circumstances, it is particularly essential to ensure that the way restrictions are applied in no way detract from the adjustment process or contradict the objectives of the General Agreement.

5. The experience with the application of Article XVIII:B has, however, been far from satisfactory. Our analysis of the operation of this provision is contained in our communication, so that there is no need to restate it on this occasion. There are, however, a number of essential elements which deserve emphasis:

- (i) It has proved difficult to ensure the temporary nature of restrictions maintained for balance of payments purposes. Indeed, throughout the 1975-1988 period only three countries consulting under the BOP Committee formally disinvoked Article XVIII:B. Consulting countries have often proved reluctant to indicate a time-frame for the removal of restrictions, which would help the Surveillance rôle of the Committee. Consideration of changes in the economic environment, and how these relate to trade policy measures, has often been insufficient. Thus, of a total of 106 consultations held during this period, 77 took place under simplified procedures.
- (ii) The BOP Committee has rarely examined in a systematic manner the trade régimes of consulting countries in the light of the criteria laid down by the article and the 1979 Declaration. The task of the Committee has often been made difficult by the existence of wide divergences on the interpretation of these provisions. A particular concern is the lack of clarity which seems to exist about the distinction between restrictions applied for balance of payments purposes and those whose object or effect

is the protection of domestic industries. As has been noted by the Secretariat (NG7/W/14, page 2), avoiding the confusion between these two types of measures is the clear aim of the Balance of Payments exception in GATT. The General Agreement recognises that, under certain circumstances, developing countries should be in a position to protect their infant industries. There is a need to examine why recourse to that provision has been rather limited in practice.

- (iii) There has been insufficient consideration of the way in which contributions from other contracting parties may help to alleviate the balance of payments situation of consulting countries. We need to examine how the effectiveness of paragraph 12 of the 1979 Declaration could be increased and how far an overall improvement in the Surveillance rôle of the BOP Committee could help to achieve this objective.

6. Against this background, the EC has become convinced that a review of the Balance of Payment provisions is in the common interest of all contracting parties, whatever their level of development. A failure to improve the Surveillance rôle of the Balance of Payments Committee can only lead to a growing source of tension in the multilateral trading system. The task of this Group should be to seek to develop, on the basis of a common understanding, clearer principles and more effective procedures, as well as to reinforce the political will that will be needed to approach BOP consultations in a spirit of cooperation. There is nothing in our proposal which would compromise the principle of differential and more favourable treatment for developing countries, which should always be interpreted in a dynamic manner consonant with economic realities. In this sense, we would like to draw attention to page 3 of our communication, where it is said that: "Negotiations should aim at achieving higher commitments from all contracting parties and take into account the fact that the flexibility of economies to adjust to external shocks increases progressively with their level of development".

7. Finally, the Group should not lose sight of the relationships between a review of the BOP Articles and the work undertaken in other Negotiating Groups. Proposals made in the Functioning of the GATT Group to establish a trade policy review mechanism and to improve the cooperation between GATT and the Bretton Woods institutions reinforce the aims of our work in the GATT Articles Group. It is appropriate that Surveillance over the application of particular GATT exceptions should be complemented by a wider transparency exercise applicable to all contracting parties. The nature of the two surveillance exercises will necessarily be different and therefore there can be no question of one excluding the other. This Group could, however, examine, in a pragmatic manner, ways in which Balance of Payments consultations could take into account the existence of the new trade policy review mechanism so as to avoid excessive administrative burdens on consulting countries. There have also been proposals, notably in the Safeguards Group, to reinforce multilateral surveillance over the

application of other major exceptions to obligations undertaken under the General Agreement. In our view, a strengthened GATT requires improved disciplines in relation both to measures taken to provide temporary protection to domestic industry and to those which apply for balance of payments purposes. Lack of effective multilateral surveillance on any of these two areas can only lead to the evasion of GATT disciplines and an erosion of the multilateral trading system.