

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/58
16 November 1989

Special Distribution

Original: English

Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

PROPOSAL FOR REFORM OF THE GATT BALANCE OF PAYMENTS DISCIPLINES

Submission from the United States and Canada

The following proposal has been received from the delegations of the United States and Canada, with the request that it be circulated to members of the Negotiating Group.

I. INTRODUCTION AND SUMMARY

The attached proposal is aimed at providing more effective policies to improve the operation of the balance of payments provisions. While it continues to recognise the right of countries to impose temporary trade restrictions to assist in addressing serious difficulties in their balance of payments position, it attempts to establish a more sustainable balance between this right and the obligations on the part of all parties to pursue policies which contribute to the viability of the GATT system as a whole.

To this end, the proposal attempts to provide clearer guidance to enable contracting parties to resort to trade restrictions, where these are necessary, for the shortest period of time and with the least harmful impact on trade.

The proposal further sets out a process which will permit a contracting party taking trade restrictions consistent with clearly established guidelines to do so without the need for a decision by the Balance of Payments Committee.

Under this mechanism, Guidelines are established for the kinds of actions that countries with serious balance of payments problems are entitled to take without a decision by the Balance of Payments Committee. If countries conform to the Guidelines, they need only inform the Committee of their measures taken for balance of payments reasons at regular consultations. There is no need for the Committee to draw conclusions during consultations as to the GATT-consistency of these measures.

Where countries wish to take exceptional measures which do not conform to the Guidelines, the proposal provides that they must inform the Committee of their alternative plans for application and phase-out of balance of payments measures and submit the exceptional measures to the Committee for a decision about whether the measures are acceptable. A Committee decision that the measures are acceptable establishes their GATT-consistency. To facilitate the achievement of Committee consensus, the proposal provides the opportunity for the Committee to accept exceptional measures conditionally, that is, subject to fulfilment of specific Committee recommendations for reform of measures. If the Committee does not accept the measures, adversely affected countries can, if they wish, pursue their interest through normal GATT procedures.

II. OBJECTIVES

The proposal has three objectives:

- (1) to clarify the criteria for assessing trade restrictions applied for BOP purposes;
- (2) to provide guidelines for the kinds of actions countries facing serious BOP problems are entitled to take without a decision by the BOP Committee; and
- (3) to strengthen disciplines and BOP Committee procedures which apply to countries wishing to take measures in excess of those specified in the guidelines.

III. STATEMENT OF PRINCIPLES

The CONTRACTING PARTIES shall agree that the following principles shall guide the operation of the GATT BOP Committee and countries' decisions concerning the use of BOP-related trade restrictions.

- Trade restrictions for BOP purposes, which are recognised as an inefficient means to maintain or restore BOP equilibria, shall not be imposed as a substitute for more appropriate measures.
- Trade restrictions for BOP purposes shall only be imposed on a temporary basis if necessary to provide time for more appropriate adjustment policies to take effect.
- Prolonged use of trade restrictions perpetuates BOP problems and frustrates adjustment by damaging economic efficiency and growth.
- Macroeconomic/exchange rate policies, as well as structural policy reforms including trade liberalisation, are the effective means for correcting external imbalances on a sound and lasting basis.

- The BOP exemption shall provide for a limited exception from the GATT prohibition against quantitative restrictions and from tariff obligations and shall not exceed what is necessary to address serious BOP difficulties.
 - The CONTRACTING PARTIES have a right to impose limitations and conditions on the use of trade restrictions by countries invoking these Articles.
 - The GATT BOP Articles shall comprise effective sets of disciplines to guide countries back into conformity with GATT principles and obligations.
- BOP disciplines shall particularly limit recourse to the most distortive kinds of trade restrictions. Price-based measures which apply as uniformly as possible across sectors should be employed rather than selective quantitative or price-based restrictions which are more damaging to resource allocation and trade patterns.
- Trade restrictions which are applied in a manner inconsistent with these principles result in the inefficient allocation of resources, encourage the development of some industries or sectors at the expense of others, and are not to be considered acceptable responses to balance of payments difficulties. They must be justified on other GATT grounds or removed.
- Disciplines which apply to developed countries shall strongly discourage resort to any trade restrictions in periods of BOP difficulty.
- The BOP Committee shall, in its deliberations, take account of any trade measures imposed by other contracting parties which have a direct effect on the BOP situation of the consulting country.

IV. IMPROVED DISCIPLINES AND PROCEDURES

Criteria for Assessing Countries' Use of BOP-Related Trade Restrictions

A country's use of BOP-related trade restrictions shall be evaluated by the BOP Committee in the light of (a) its BOP situation and economic adjustment effort and (b) the consistency of the specific types of measures chosen with GATT principles and obligations.

A. The BOP Situation and the Economic Adjustment Effort:

Countries seeking a BOP exemption from basic GATT disciplines must have a serious balance of payments problem and must be engaged in a responsible effort to restore equilibrium "on a sound and lasting basis" (Article XII:3; Article XVIII:11).

- The BOP Committee shall accept the determination of the International Monetary Fund regarding the severity of the BOP problem. The Fund may base its determination on whatever information it deems pertinent, including exchange reserve developments, other BOP developments, financial developments, and domestic macroeconomic developments.
- In addition, the International Monetary Fund shall provide relevant and appropriate information concerning the adjustment measures being undertaken to correct the BOP problem. The BOP Committee shall accept the determination of the Fund concerning the relationship between the country's overall adjustment effort and its use of BOP-related trade restrictions: specifically, the Fund statement should take up the question of whether the country has in place adjustment policies that would allow progressive removal of BOP-related trade restrictions by the medium term.
- Non-members of the Fund shall provide sufficient information to the CONTRACTING PARTIES to enable the BOP Committee to assess the severity of the BOP problem and the economic adjustment effort in relation to application of trade restrictions.

B. Consistency of Specific Measures Chosen:

In addition to the requirement that the BOP problem be serious and that appropriate adjustment effort be underway, countries applying BOP-related trade restrictions are obliged to ensure that the duration, intensity, scope, and types of measures employed are as consistent as possible with GATT principles and obligations.

Specifically, trade restrictions imposed on BOP grounds shall meet the following standards. They shall

- be temporary and degressive;
- be administered on an MFN basis;
- be transparent and primarily price-based;
- be applied to substantially all imports, so that restrictions justified on BOP grounds are aimed at controlling the level rather than the composition of imports¹;

¹This is to ensure that BOP-related measures are not taken for the purpose of protecting a particular industry or sector, a purpose addressed by other GATT provisions such as Article XVIII:C. If product exceptions for BOP measures are necessary, they should be limited to: (a) allowing unrestricted imports of products not produced domestically but essential for basic consumption or industrial needs, e.g., food or petroleum; or (b) applying more stringent restrictions on imports of luxury goods, i.e., those products subject to domestic excise taxes on luxury goods. Imports of all other products should be treated on an equal basis and should be subject to restrictions of the same intensity.

- not exceed what is required to address the BOP problem and not administratively prohibit trade in any given product; and
- not be applied in a manner which results in the imposition of multiple BOP-related measures on any product.

The Rights and Obligations of Consulting Countries

Two different approaches for meeting GATT obligations are available to a country taking trade restrictive actions for BOP reasons. A country has the right to take actions consistent with pre-established Guidelines covering the nature, type, and duration of the restrictions. In this case, the country must consult regularly with the BOP Committee to provide full information on its actions, but no explicit acceptance of the restrictions by the Committee is necessary.

Alternatively, the country can seek Committee acceptance of its actions as exceptions if they do not conform to the Guidelines. In this case, the onus is on the consulting country to demonstrate to the BOP Committee that exceptional (i.e. more restrictive, more distortive, longer-term) measures are justified and that no, less disruptive alternatives are available. If the country gains acceptance of its exceptional restrictions from the BOP Committee, it is considered to be in conformance with its GATT obligations. If the country fails to gain acceptance, the GATT consistency of its actions can be addressed through GATT dispute settlement procedures, if desired by adversely affected countries.

The Initial Consultation

The initial consultation shall be held within four months of the imposition of new restrictions or the intensification of existing restrictions. The consulting country shall notify the new or intensified restrictions as soon as they are imposed, or prior to their imposition if possible. If the measures are removed in a period less than four months, no consultation is necessary.

The purpose of the initial consultation is to determine whether there is a serious BOP problem, whether the country is conforming to the standards cited above in selecting specific measures, and what the country's plans are for adjustment to the BOP problem and progressive removal of the measures. Specifically, the country should indicate its intentions concerning adherence or non-adherence to the Guidelines (below) for BOP-related measures.

Measures Which Do Not Require a BOP Committee Decision

Unless the International Monetary Fund finds no serious BOP problems, a country shall have the right to apply BOP-related trade restrictions, without the need for a BOP Committee decision, if the measures and their application conform to the following generally applicable Guidelines on the use of BOP-related measures.

Guidelines

Phase I (period between imposition or intensification of the measures and the second consultation; see the Consultation Schedule below): No discriminatory measures and no measures which prohibit all trade in a given product can be used; multiple BOP-related measures cannot be applied on any product. Quantitative measures must be phased out by the end of the period.

Phase II (period between the second consultation and the third (final) consultation): Remaining BOP-related measures must be price-based and applied to substantially all imports. Remaining quantitative restrictions must have been eliminated by the beginning of the phase or justified on other GATT grounds. BOP-related measures must be eliminated by the end of the period.

Countries reimposing BOP-related trade restrictions within three years of eliminating previous BOP-related measures must follow Guidelines beginning with Phase II.

Measures Which Require a BOP Committee Decision

If, at any point, the consulting country elects to apply trade restrictions which do not conform with the measures outlined in the above Guidelines (e.g. they are more restrictive, distortive, or long-lasting), the country must: (a) supply the BOP Committee with its plan for applying and phasing out the measures, i.e. its trade liberalisation plan for BOP-related measures; and (b), seek the Committee's acceptance of the exceptional measures at regular consultations.

The Trade Liberalisation Plan for BOP-Related Measures

The purpose of the liberalisation plan is to inform the Committee of the extent to which the consulting country intends to deviate from the Guidelines established above and to specify its alternative sequence for phasing out BOP-related measures.

The plan shall be implemented within a reasonable, clearly specified time-frame. The plan constitutes a binding commitment to the CONTRACTING PARTIES, and its implementation shall be monitored at subsequent consultations. It should be specific about types of BOP-related measures applied and individual products affected to allow members of the Committee to make an informed decision about whether trade liberalisation progress under the plan is acceptable to them.

Countries formulating these trade liberalisation plans for BOP-related measures should incorporate in the plans any commitments for liberalising BOP-related trade restrictions made in the context of World Bank and IMF policy-based lending.

Conclusions to BOP Committee Consultations When A Decision Is Required

The consulting country gains acceptance of exceptional actions which go beyond the Guidelines specified above if the BOP Committee recommends either of the following to the GATT Council:

- Acceptance. If the BOP Committee recommends acceptance of the measures with no conditions, the consulting country has fulfilled its GATT obligations under these Articles until the next scheduled consultation.
- Conditional Acceptance. The Committee can recommend acceptance of the exceptional restrictions on the condition that the consulting country implement specific Committee recommendations, including recommendations to modify, or speed implementation of, its trade liberalisation plan. The time-frame for implementing Committee recommendations shall be specified by the Committee.

If, at the end of a consultation concerning measures not conforming to the Guidelines, the BOP Committee report includes neither of these recommendations, the measures are not accepted by the BOP Committee. The question of the GATT consistency of the exceptional measures can be taken up by adversely affected countries, if they wish, in GATT dispute settlement.

If a consultation cannot be completed during the initially scheduled meeting, the Committee shall reconvene no later than 30 days from the start of the consultations in question. If there is no agreement to recommend either of the decisions specified above by the end of 45 days after the start of the consultations in question, the measures are not accepted by the BOP Committee.

Consultation Schedule

Normally, after the initial consultation, full consultations will be held every year for developed countries and every two years for developing countries so long as restrictions justified on BOP grounds remain.

However, the Committee may consult more frequently if warranted by the following circumstances.

- If the initial consultation occurred more than four months after the measures were imposed or intensified, the second consultation shall be scheduled earlier by an amount of time corresponding to the delay in the initial consultation.
- If consultations are incomplete, the Committee shall resume consultations promptly as described above.

- If a country departs from its commitment to follow the Guidelines in the period intervening between two consultations (e.g. due to external factors which cause the country's BOP situation to worsen), it should promptly request an early consultation to seek acceptance by the BOP Committee for its exceptional measures.
- In cases where exceptional measures are being applied with the acceptance of the BOP Committee, if a country departs from, or wishes to depart from, its own trade liberalisation plan for BOP-related measures in a manner which slows trade liberalisation progress (e.g. due to adverse external factors), it should promptly request an early consultation to seek the further acceptance of the BOP Committee for this departure from its commitment.

The Committee can decide in the case of a developing country making rapid trade liberalisation progress that its next consultation can be conducted under simplified procedures.

In fixing the exact dates for consultations, the BOP Committee and appropriate IMF officials shall endeavour to coordinate BOP consultation schedules with IMF consultation schedules to ensure that an up-to-date IMF statement on the consulting country's BOP situation and economic policies can be made available to the Committee on the proposed date.

Information Required by the Committee

In notifications of BOP-related trade restrictions and in statements provided to the Committee prior to BOP consultations, countries shall furnish complete information in a timely fashion on:

- the level and coverage of tariff rate increases for BOP reasons, including information on which items are bound;
- the specific items which are affected by quantitative restrictions (QRs) applied for BOP reasons, the specific types of restrictions used, such as discretionary licensing requirements, and how the restrictions are administered, e.g. how permissible import quantities are determined;
- the coverage of BOP-related QRs, such as the share of total domestic output, the tariff schedule, and import flows subject to restrictions;
- recent trade flows for restricted items;
- the length of time specific BOP-related measures have been in place, and the timetable for their removal;
- any increases in trade restrictions by other contracting parties which have contributed significantly to the consulting country's BOP deterioration; and
- an overview of non-BOP-related trade restrictions to provide the trade policy context in which BOP measures operate.

If a country applying BOP-related measures fails to provide complete information to the GATT secretariat and the Committee in a timely fashion prior to consultations, the Committee can report to the GATT Council that the country's consultation cannot be completed without additional information. While a consultation remains incomplete, any BOP measures which do not conform to the Guidelines are not accepted by the BOP Committee.

The Rights of Other Contracting Parties

Countries adversely affected by a contracting party's BOP-justified measures which exceed those allowable under the Guidelines can seek redress through GATT dispute settlement procedures if:

- the exceptional measures have not been accepted, with or without conditions, by the BOP Committee;
- the consulting country fails to implement the conditions for acceptance; or
- the consulting country departs from, or fails to implement, its trade liberalisation plan for BOP-related measures and fails to gain Committee acceptance of this derogation from its commitment.

In these cases, the onus in dispute settlement proceedings is on the country applying the exceptional measures to demonstrate that no, less disruptive (restrictive or distortive) alternatives are available and that the measures are GATT-consistent. The panel shall use the same criteria for assessing BOP-related trade restrictions as those outlined above for use by the BOP Committee.

Where a panel report which concludes that the measures are inconsistent with the invoking country's GATT obligations is adopted by the Council, adversely affected contracting parties may withdraw concessions of equivalent value.

In addition, under existing rules, if the BOP Committee reports to the GATT Council that the restrictions are inconsistent with the provisions of the General Agreement and if that finding is adopted by the CONTRACTING PARTIES, adversely affected contracting parties are released from appropriate obligations to the country applying the restrictions.

In any case, contracting parties retain their existing rights to seek redress where any action, whether or not it conflicts with GATT rights or obligations, is nullifying or impairing any benefit accruing to them directly or indirectly. However, in such cases where there is no question of violation of an obligation, the onus is on the affected country to demonstrate actual injury due to the measure(s) in question.