

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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BALANCE-OF-PAYMENTS PROVISIONS

Communication from the European Community

The following communication has been received from the delegation of the European Community with the request that it be circulated to members of the Group.

Proposal for a Declaration on Trade Measures taken for Balance of Payments purposes and for a Declaration on Trade Measures taken to promote the establishment of a particular industry

INTRODUCTION

The European Community has indicated in two previous communications to the Negotiating Group (W/37 and W/49) its support for a review of the Balance of Payments Articles (Articles XII and XVIII:B). In this context, the question has also been raised of the need to examine Article XVIII:C, which allows for the imposition of trade restrictions to promote the establishment of a particular industry. In order to facilitate intensive work on these Articles, the Community is now presenting two proposals which aim at clarifying and improving these provisions. As regards Articles XII and XVIII:B, the basic objective is to improve the effectiveness of multilateral disciplines, both through a clarification of the criteria for the application of trade restrictions and reinforced multilateral surveillance. As regards Article XVIII:C, little use has been made of the facilities currently available while, on the other hand, measures taken under other provisions (notably Article XVIII:B) have sometimes the purpose or effect of promoting domestic production. In order to address this situation, the proposal suggests a relaxation of some of the criteria for the application of Article XVIII:C actions (notably as regards the conditions for the application of countermeasures and on the possibility of having recourse to tariff action), while ensuring that proper multilateral surveillance is maintained.

In order to facilitate a better understanding of the proposals, and to answer certain concerns expressed in the Group, the EC would like to indicate three guiding principles inspiring this contribution:

GATT SECRETARIAT

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- The Community has recognized, both in discussions in the Group and in Article XVIII:B consultations, the serious balance of payments difficulties experienced by a number of developing countries. There is nothing in our proposal that would deprive countries experiencing serious balance of payments difficulties of adequate policy instruments to temporarily control imports. On the other hand, we see a clear need to affirm a number of criteria to which trade restrictions applied for balance of payments reasons should be subject. These criteria are based upon the provisions of Articles XII and XVIII:B, as well as the 1979 Declaration on Trade Measures taken for balance of payments purposes. Where appropriate, clarifications are suggested in order to avoid conflicting interpretations and promote better compliance. Particular importance is attached, in this respect to the need to give preference to uniformly applied price-based measures without, on the other hand, denying that quantitative restrictions may have a limited role to play in a balance of payments context. The improvements suggested in consultation procedures aim not only at achieving greater transparency, but also at giving a more forward-looking role to the BOP Committee through the discussion of trade liberalization plans. The Committee would be encouraged to reach consensual solutions in relation to these plans so as to avoid the risks of conflicts arising as regards the implementation of BOP disciplines.
- The proposal in no way questions the principle of Special and Differential Treatment or the particular role of Article XVIII:B in the General Agreement. As noted in previous communications, the EC acknowledges the need for a longer time-frame for adjustment when economies are at low levels of development. In conformity with this principle, the level of commitments proposed is closely related to the level of development of the economy. For those countries whose economies have attained a high level of development it is suggested to go beyond the provisions of Article XII and the 1979 Declaration so as to strictly limit the possibility of taking trade restrictive action for balance of payments purposes. In relation to countries applying restrictions under the provisions of Articles XII or XVIII:B, the criteria and procedures proposed are sufficiently flexible to take into account the particular conditions of each economy. Finally, special flexibilities are envisaged in the case of least developed countries.
- The Community has sought to ensure that balance is maintained as regards the interests of all contracting parties. In this respect, the proposals presented seek to incorporate greater disciplines as regards BOP restrictions applied by industrialized countries, additional flexibilities on the application of Article XVIII:C and more operative provisions to deal with the external economic environment in the context of BOP consultations with developing countries. It goes without saying that a number of issues raised by developing countries in connection with the reform of balance of payments disciplines are being actively pursued in other negotiating groups: global negotiations should lead to a final result in which the common interest of all countries to achieve greater trade liberalization and reinforced multilateral disciplines can be satisfied.

Proposal for a Declaration on Trade Measures  
taken for Balance of Payments purposes

The Contracting Parties,

Having regard to the provisions of Article XII and XVIII:B of the General Agreement;

Recalling that contracting parties the economies of which can only support low standards of living and is in the early stages of development may have recourse to the provisions of Article XVIII:B, while other contracting parties applying restrictive import measures for balance of payments purposes should have recourse to the provisions of Article XII;

Recognizing that, notwithstanding the provisions of Article XII, and subject to the qualifications under paragraph 1 of this Declaration, contracting parties whose economies have attained a high level of development shall undertake not to apply restrictive import measures for balance of payments purposes;

Reaffirming that trade measures are an inefficient means to maintain or restore balance of payments equilibrium;

Convinced that restrictive import measures may only be temporarily applied in order to allow time for the implementation of those domestic policies which, through the correction of macroeconomic imbalances and the promotion of competitiveness and improvements in the efficient use of economic resources, are needed to restore balance of payments equilibrium on a sound and lasting basis;

Reaffirming that restrictive import measures taken for balance of payments purposes should not be taken for the purpose of protecting a particular industry or sector and that the choice and administration of such measures should be guided by the need to avoid the incidental protection of particular industries or sectors;

Convinced of the need to set out clear criteria for the application of restrictive import measures taken for balance of payments purposes and to reinforce the effectiveness of the periodic consultations required under the General Agreement;

Recognizing that, without prejudice to the rights and obligations under the General Agreement, the application of countermeasures against the exports of a country experiencing balance of payments difficulties is particularly inadequate as a remedy and that therefore efforts should be made to promote the implementation of Articles XII and XVIII:B through recommendations adopted following the consultation procedures established under those Articles;

Recognizing that the efforts of less developed Contracting Parties to restore balance of payments equilibrium on a sound and lasting basis should be supported through an adequate flow of financial and real resources and the maintenance and promotion of an open trading environment and that both the GATT and the international financial institutions have important roles to play in this respect;

Agree that:

1. Contracting Parties whose economies have attained a high level of development undertake to avoid having recourse to restrictive trade measures for balance of payments purposes. In the event that a Contracting Party signatory to this undertaking,<sup>1</sup> considers it to be necessary, in view of a critical balance of payments situation and the lack of alternative measures to restore equilibrium in the short term, to impose restrictive import measures for balance of payments purposes, it shall enter into consultations with the CONTRACTING PARTIES prior or immediately after the introduction of such measures. Unless the CONTRACTING PARTIES otherwise agree, restrictions may not be maintained for a period exceeding X months.

2. Contracting Parties experiencing serious balance of payments difficulties and pursuing efforts to restore equilibrium on a sound and lasting basis may apply restrictive import measures. In order to ensure that such measures do not have as their object or effect the protection of particular industries or sectors and to avoid unnecessary damage to the commercial or economic interests of any other contracting party, restrictions shall be applied in conformity with the following criteria:

(a) The overall level of import restrictions is not to exceed what is necessary to address the balance of payments situation;

(b) A reasonable time schedule is publicly announced for the elimination and progressive relaxation of restrictions applied for balance of payments purposes;

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<sup>1</sup>A list of contracting parties' signatories to this undertaking should be annexed to this Declaration. (In the view of the European Community, OECD members and other contracting parties whose economies have a comparable level of development should become signatories as part of the Uruguay Round. The list would remain open for future signature by other Contracting Parties).

(c) Restrictive import measures are applied at the same level of intensity across products and without discrimination among Contracting Parties. Such measures shall be administered in a transparent manner and, under no circumstances, shall their application be linked to the existence of a domestic production capacity;<sup>2</sup>

(d) Under no circumstances trade is prohibited on specific items or more than one restriction applied on the same product.

3. In dealing with balance of payments difficulties, Contracting Parties undertake to give preference to the use of price-based measures<sup>3</sup> and to avoid the introduction or intensification of quantitative restrictions.

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<sup>2</sup>In conformity with the provisions of Article XII(3)(b) and XVIII:10, priority may be given to the importation of essential products. Any such departure from the principle of uniformity shall be specifically justified and all relevant information provided as to the reasons for the special treatment granted to certain products. Other Contracting Parties may also request information on the intensity of the restrictions applied to individual products in order to satisfy themselves that such restrictions do not have the effect of protecting or promoting domestic production.

<sup>3</sup>Reference to price-based measures shall be understood to cover uniformly applied import surcharge. Import deposit requirements or other equivalent measures with an impact on import prices, as opposed to licensing or other restrictions with direct impact on import quantities.

Contracting Parties currently applying quantitative restrictions for balance of payments purposes or which consider it to be absolutely necessary - in view of a particularly critical and rapid deterioration of the balance of payments situation - to introduce such measures shall indicate the reasons why recourse to quantitative restrictions has proved necessary and present for consideration by the CONTRACTING PARTIES a plan for their elimination or replacement by price-based measures within a specific time-frame. Except for the case of least developed contracting parties, this time-frame shall not exceed a maximum period of X years.<sup>4</sup>

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<sup>4</sup>It is recognized that only price based measures can ensure full compliance with the principle of uniformity and that, in order to avoid protective effects, quantitative restrictions may only be applied in particularly urgent and critical situations and for short periods of time. In those cases in which quantitative restrictions are introduced, the quantity or the value of imports should be fixed on the basis of uniform criteria that reflect the existing level of trade and any element of discretionary licensing excluded. It is recognized that for existing licensing restrictions, in particular those of longstanding application, the reference to existing levels of trade would not be adequate. Consideration should be given, in the light of the work of other Negotiating Groups, to specific transitional provisions intended to deal with quantitative restrictions currently applied for balance of payments purposes. Elements to be further examined could include:

- (a) a standstill on the introduction or intensification of qr's applied for balance of payments purposes;
- (b) the conversion of existing licensing restrictions into quotas fixed at commercially significant levels of trade, taking into account the need to significantly improve market access opportunities in the case of those qr's which have a particularly restrictive effect on trade or which cause particular damage to the commercial or economic interests of other cp's;
- (c) Time-schedule for the phase-out of existing qr's and modalities for depressive application.

The relationship between any such commitment in the Uruguay Round assumed by countries currently invoking the balance of payments exception and the provisions of this Declaration will need to be examined at a later stage.

4. The GATT Committee on Balance of Payments Restrictions (hereafter referred to as "Committee") shall carry out consultations in order to review all restrictive import measures taken for balance of payments purposes. The Membership of the Committee is open to all Contracting Parties indicating their wish to serve in it.

5. Contracting Parties shall notify to the GATT the introduction or any changes in the application of restrictive import measures taken for balance of payments purposes prior to or immediately after their entry into force. Notifications shall include full information on the type of measures applied, criteria used for their administration, product coverage and trade flows affected. At the request of any Contracting Party, notifications may be reviewed by the Committee. Contracting Parties which have reasons to believe that a restrictive import measure applied by another Contracting Party was taken for balance of payments reasons may bring the matter to the attention of the Committee. The Chairman of the Committee shall request information on the measure and make it available to all Contracting Parties if appropriate.

6. Contracting Parties applying new restrictions or intensifying the level of existing restrictions shall enter into consultations with the Committee within four months of the adoption of such measures<sup>5</sup>. All restrictions applied for balance of payments purposes shall subsequently be subject to periodic review in the Committee in conformity with the provisions of Article XII and XVIII:B of the General Agreement, subject to the possibility of altering the periodicity of consultations in agreement with the consulting country or pursuant to any specific review procedure that may be recommended by the Council as established under paragraph 13 of this Declaration.

7. 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 (hereafter referred as "full consultations procedures") subject to the provisions set out below.

8. The basic document for the consultations prepared by the consulting country should include, in addition to any other information considered to be relevant: (a) An overview of the balance of payments situation and prospects, including a consideration of the internal and external factors having a bearing on the balance of payments situation and the domestic policy measures taken in order to restore equilibrium on a sound and lasting basis. (b) A full description of the import restrictions applied for balance of payments reasons, legal basis and steps taken to avoid incidental protective effects. (c) Measures taken since the last consultations to liberalize import restrictions, in the light of the conclusions of the Committee; plan for the elimination and progressive relaxation of remaining restrictions. Reference may be made, when relevant, to the information provided in other GATT notifications or reports.

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<sup>5</sup> Contracting parties which, as a result of a worsening of the balance of payments situation, depart from the liberalization plans presented to the Committee, shall enter into consultations under this provision.

9. The GATT secretariat shall with a view to facilitating the consultations in the Committee prepare a factual background paper dealing with the different aspects of the plan for consultations. In the case of less developed Contracting Parties, the secretariat document will include relevant background and analytical material on the incidence of the external economic environment on the balance of payments situation and prospects of the consulting country. The technical assistance services of the GATT secretariat shall, at the request of a less developed consulting Contracting Party, assist in preparing the documentation for the consultations.

10. Consultations may be held under simplified procedures in the case of least developed contracting parties or other less developed contracting parties which are pursuing liberalisation efforts in conformity with the plan presented to the Committee in previous consultations. In the event of significant changes in the balance of payments situation or in the overall level or nature of the trade measures taken for balance of payments purposes, consultations shall be held under full procedures. Except in the case of least developed contracting parties, no more than two successive consultations may be held under simplified procedures. A less developed contracting party may at any time request full consultations.

11. Under simplified procedures, the consulting country shall submit a written statement containing essential information on the elements mentioned under paragraph 8. The secretariat background paper shall provide any additional information necessary for the consideration of the balance of payments situation and the trade measures applied by the consulting country. Without prejudice of the right of any member of the Committee to seek appropriate clarifications, questions may be submitted in advance of consultations for consideration by the consulting country.

12. The Committee shall report on its consultations to the Council. In the case of full consultations, the report should indicate the Committee's conclusions on the different elements of the consultation plan, as well as the facts and reasons on which they are based. The Committee shall endeavour to include in its conclusions proposals for Council recommendations as referred to under paragraph 13 of this Declaration. In the absence of specific recommendations, the conclusions should record the different views expressed in the Committee. In the case of simplified consultations, the report shall include a summary of the main elements discussed in the Committee and a decision, on the basis of the progress achieved in eliminating balance of payments restrictions, on whether full consultations are needed.

13. The Committee's conclusions may include such findings as will assist the Council in making appropriate recommendations designed to promote the implementation of Article XII and XVIII:B and this declaration. Proposals for recommendations by the Council may include, inter alia:



- (a) If the Committee finds that the balance of payments situation does not justify the application of restrictive import measures, a recommendation for their elimination. In the case that the immediate elimination of restrictions does not appear to be practicable, the recommendation shall indicate the modalities and time-frame for the phase-out of those restrictive import measures which had been maintained for balance of payments purposes;
- (b) If the Committee finds that restrictions are being applied in conformity with the criteria set out under Articles XII and XVIII:B and this Declaration, a recommendation that, in adhering to the trade liberalisation plan presented to the Committee, the consulting country shall be deemed to be in compliance with its GATT obligations;
- (c) If the Committee finds that restrictions are being applied inconsistently with the provisions of Articles XII and XVIII:B and this Declaration, a recommendation to modify restrictions in a manner which ensures conformity with such provisions.

In those cases in which the Council has made specific recommendations, the rights and obligations of Contracting Parties shall be assessed in the light of those recommendations. The Committee shall keep under review any matter on which recommendations have been made by the Council.

14. In the course of full consultations with a less developed contracting party, the Committee shall consider actions which might be taken by the CONTRACTING PARTIES to facilitate an expansion of the export earnings of the consulting contracting party. The Committee may propose to the Council that consideration be given to collective action by the CONTRACTING PARTIES aimed at supporting the trade liberalisation plans presented by the consulting country, including the examination of any trade restrictive measures with a view to mitigating or avoiding any negative impact on the consulting country's export earnings. The CONTRACTING PARTIES may also bring to the attention of the competent international financial institutions the efforts undertaken by a less developed contracting party to restore balance of payments equilibrium on a sound and lasting basis, while reducing the incidence of trade restrictive measures.

Proposal for a declaration on trade measures taken to promote  
the establishment of a particular industry

1.

1. Wherever possible, contracting parties wishing to promote the establishment of a particular industry<sup>1</sup> should give preference to assistance measures or other government policies in order to avoid the application of trade restrictions under Articles XVIII:A or C of the General Agreement.

2. Any measure applied under Section C of Article XVIII shall be for the purposes of contributing to the establishment of an industry which can be expected to make sufficient progress in the course of time to be able to exist without the need for the special measures permitted under that provision. Under no circumstances shall restrictions be introduced or maintained to protect industries that export a significant share of their production and which can be deemed therefore to be sufficiently competitive not to require the special facilities available under that provision.

2.

1. Any contracting party notifying its intention to invoke the provisions of Article XVIII:A or XVIII:C, hereinafter referred to as the requesting contracting party, shall supply all necessary information to enable the CONTRACTING PARTIES to satisfy themselves that the requesting contracting party comes within the scope of paragraph 4(a) of Article XVIII.

2. In appropriate cases where the necessary information is readily available and in particular as regards the least developed countries, the CONTRACTING PARTIES will not expect the requesting contracting party to duplicate that information.

3. In the case of Article XVIII:C the requesting contracting party shall provide information in accordance with the questionnaire<sup>2</sup> approved on 15 October 1958 (BISD Sixth Supplement, pages 129-130).

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<sup>1</sup>The term establishment of a particular industry shall be interpreted in the light of the Note on paragraphs 2, 3, 7 and 13 and 22 of Article XVIII and paragraph 1 of the Decision of 28 November 1979. References throughout this Declaration to Articles XVIII:A and C shall be interpreted as including the additional flexibilities provided under the Decision of 28 November 1979 on Safeguard Action for Development purposes.

<sup>2</sup>It would be for consideration in the Negotiating Group whether or not the 1958 questionnaire should be modified.

3.

1. Any restriction introduced in accordance with the provisions of Article XVIII:C shall be temporary and progressively relaxed over its period of application.
2. The requesting contracting party shall state the contemplated duration of the measure and indicate the modalities for its progressive relaxation.
3. Notwithstanding the provisions of Article XVIII:20, a contracting party having recourse to Section C of Article XVIII may temporarily increase a rate of bound duty or apply an import surcharge. Any price-based measure or quantitative restriction introduced under Section C of Article XVIII may not exceed what is necessary to promote the establishment of a particular industry and shall be applied in conformity with the provisions of Article XVIII:10.

4.

1. Contracting Parties seriously affected by measures adopted under Section C of Article XVIII may suspend the application to the trade of the contracting party having recourse to that Section of substantially equivalent concessions or other obligations only in one or more of the following circumstances:
  - (a) Consultations, as required under paragraphs 16 and 18 of Article XVIII and paragraph 5 of this Declaration, have not been held.
  - (b) A maximum period of X years for the application of measures has expired.
  - (c) It has been found through dispute-settlement procedures that the measure does not conform with the criteria established under Article XVIII and this Declaration.
2. The requesting contracting party may offer compensation to the affected exporting contracting parties. Preference shall be given to any such compensatory arrangements rather than to the application of countermeasures in the circumstances referred to under paragraph 4(1) of this Declaration.

5.

1. The CONTRACTING PARTIES shall enter into consultations with contracting parties having recourse to the provisions of Article XVIII:C. The Committee<sup>3</sup> shall carry out the consultations referred to in paragraph 16 of Article XVIII, as well as the annual reviews referred to in paragraph 6 of Article XVIII, and report to the CONTRACTING PARTIES.

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<sup>3</sup>It is for consideration whether these tasks could be better performed by the Safeguards Committee, whose establishment is being discussed in the Negotiating Group on Safeguards, or other existing Committees under the GATT, such as the Committee on Trade and Development.