

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/72

15 June 1990

Special Distribution

Original: English

Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

PROPOSAL BY CANADA AND THE UNITED STATES

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

DECLARATION ON TRADE MEASURES
TAKEN FOR BALANCE-OF-PAYMENTS PURPOSES

Preamble

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 are 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;

Recognising that, notwithstanding the provisions of Article XII, and subject to the qualifications under paragraph 1 of this Decision, 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 should 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 allocation 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, product, or sector and that the choice and administration of such measures should be guided by the need to avoid the protection of particular industries, products, 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;

Recognising the importance of contributing to the efforts of developing Contracting Parties to restore balance-of-payments equilibrium on a sound and lasting basis through financial assistance in support of adjustment policy reforms from the international financial institutions and the promotion of an open trading environment where the role of the GATT is crucial;

Agree as follows:

1. Contracting parties whose economies have attained a high level of development undertake to avoid recourse to restrictive trade measures for balance-of-payments purposes. If a contracting party signatory to this undertaking nonetheless feels it necessary to impose restrictive trade measures for balance-of-payments purposes, it shall demonstrate that the trade restrictive measures are necessary because of a critical balance-of-payments situation and that alternative, more efficient measures are not available to restore a sustainable balance-of-payments in the short term. In addition, any measures applied shall conform to the obligations and standards specified below.

2. Other contracting parties not signatory to this undertaking shall nevertheless limit their recourse to restrictive trade measures for addressing balance-of-payments problems, consistent with the obligations and standards specified below.

Obligations and Standards

3. In order to ensure that measures justified on balance-of-payments grounds are not applied in a manner which impedes effective adjustment to balance-of-payments problems, or is designed to protect selected industries or sectors, or causes unnecessary damage to the commercial or economic interests of any other contracting party, trade restrictions shall be applied in conformity with the following obligations and standards.

(a) Trade restrictions shall not be applied in the absence of critical balance-of-payments difficulties in the case of developed contracting parties, serious balance-of-payments difficulties in the case of developing contracting parties.

(b) Trade restrictions shall not be employed as a substitute for domestic policy efforts to restore a sustainable balance-of-payments on a sound and lasting basis.

(c) The overall level of trade restrictions shall not exceed what is necessary to address the balance-of-payments situation.

(d) Under no circumstance shall trade be prohibited on specific items or more than one restriction for balance-of-payments reasons be applied to the same product.

(e) Restrictive measures shall be applied without discrimination among contracting parties.

(f) Trade restrictions shall be applied in a transparent manner and be progressively relaxed within a specific time frame.

(g) The intended time schedule for the elimination and progressive relaxation of import restrictions applied for balance-of-payments reasons shall be publicly announced within four months of the imposition of the restrictions. The schedule shall include full information on the sequence by product-type and trade value for liberalisation and other indications of the pace of degressivity.

For developed contracting parties, the standard for the maximum time period for the schedule shall be x months.

For developing contracting parties, except for the least developed contracting parties, the standard for the maximum time period for the schedule shall be y years.

(h) Contracting parties shall give preference to the use of price-based measures which are applied at the same level of intensity across products². The application of balance-of-payments measures shall not be linked to the existence of domestic capacity³.

(i) Contracting parties shall seek to limit, consistent with 3(h), the introduction or intensification of quantitative restrictions⁴.

Contracting parties which consider it absolutely necessary to introduce quantitative measures shall demonstrate that recourse to quantitative restrictions is necessary because of a critical and rapid deterioration in the balance-of-payments situation and because price-based trade measures or domestic policies cannot address the problem.

(j) Contracting parties introducing quantitative restrictions shall present for consideration by the GATT Committee on Balance-of-Payments Restrictions within four months of their imposition a liberalisation schedule for their elimination or replacement by price-based measures within a specific time frame. The schedule shall include full information on the sequence by product-type and trade value for elimination or replacement and other indications of the pace of degressivity.

For developing contracting parties, except for the least developed contracting parties, the standard for the maximum time period for the schedule shall be y - z years.

4. Measures applied in conformity with these obligations and standards shall be considered consistent with Article XII and XVIII:B and this Declaration.

5. If any contracting party applies measures for balance-of-payments reasons which do not conform to these obligations and standards, the contracting party must demonstrate to the CONTRACTING PARTIES that less disruptive alternatives for addressing the balance-of-payments purpose (domestic policies or less distortive, less restrictive, or shorter-term trade restrictive measures) are not available.

Notification

6. Contracting parties shall notify to the GATT the introduction of, 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 types of measures applied, criteria used for the administration of the measures (e.g. how permissible import quantities are determined), which products are covered, and trade flows affected. At the request of any contracting party, notifications may be reviewed by the GATT Committee on Balance-of-Payments Restrictions (hereafter referred to as "Committee"). Contracting parties which have reason to believe that a restrictive import measures 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.

Balance-of-Payments Consultations

7. The 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 on it.

Information

8. The basic document for the consultations prepared by the consulting contracting party 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, including the specific types of restrictions applied and how they are administered, the coverage of restrictions by item (including product detail and the total number of items restricted by each type of measure), the proportion of trade flows restricted, the legal basis for the restrictions, the length of time restrictions have been in place, and steps taken to avoid protective effects; (c) measures taken since the last consultations to liberalise import restrictions, in the light of the conclusions of the Committee, and the schedule for elimination of the restrictions (both quantitative and price-based restrictions).

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. The paper shall focus particularly on providing the secretariat's analytical perspective on the trade regime. The GATT secretariat shall, at the request of a less developed consulting contracting party, provide technical assistance in preparing the documentation for the consultations.

10. The International Monetary Fund shall provide (except for simplified consultations described below) its determination concerning the balance-of-payments situation and prospects as provided in GATT Article XV. The Fund shall base its determination on the economic and financial information it deems pertinent. The Fund (along with the consulting country) shall also provide its assessment of the internal and external factors having a bearing on the balance-of-payments situation and prospects and the domestic policy measures taken in order to restore equilibrium on a sound and lasting basis.

Schedule and Procedures

11. 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. 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. This review shall occur every year for developed consulting contracting parties, and every two years for developing consulting contracting parties. The frequency of the review can be altered if recommended by the Council. Alternatively, the frequency can be altered based on the circumstances below.

- If a given consultation is incomplete because participants cannot reach agreement on conclusions, the Committee can decide to resume consultations promptly (within 45 days).

- Contracting parties which exceed the time standards indicated above (paras. 3(g) and 3(j)) or which depart from their liberalisation schedules presented to the Committee shall enter into consultations within four months of these developments.
12. 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"), with the exception cited below.
- Consultations may be held under simplified procedures in the case of developing contracting parties which are pursuing liberalisation efforts in accordance with the time standards indicated above and the trade liberalisation schedules which they have presented to the Committee in previous consultations. Except in the case of least developed contracting parties, no more than two successive consultations may be held under simplified procedures.
13. Under simplified procedures, the consulting contracting party shall submit a written statement containing essential information on the elements described in paragraph 8. The secretariat background paper shall provide supplementary information concerning the balance-of-payments situation and the trade measures applied by the consulting contracting party. Without prejudice to the right of any member of the Committee to seek appropriate clarifications, questions for the consulting contracting party may be submitted in advance of consultations.

Committee Conclusions and Decisions

14. The Committee shall report on its consultations to the Council.
15. 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 the reasons on which they are based. The Committee shall seek to agree on specific recommendations to the Council concerning the consistency of the measures under review with Article XII or XVIII:B, as appropriate, and with this Declaration. The Committee's recommendation shall take one of the following forms:
- The Committee recommends approval of the measures as consistent with the Articles and this Declaration. If the Council accepts this recommendation, the consulting contracting party has fulfilled its obligations until the next consultation.
 - The Committee recommends approval of the measures on the condition that they be modified, reduced, or eliminated within a specific time period so that they become consistent with the Articles and this Declaration. If the Council accepts this recommendation, the consulting contracting party has fulfilled its obligations if it implements the Committee's recommendations for changes to the measures within the specified time period.

The Committee shall keep under review any matter on which recommendations have been made by the Council. In the absence of such specific recommendations, the conclusions section of the report should record the different views expressed in the Committee.

16. In the course of full consultations with a developing 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 schedules presented by the consulting contracting party, 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.

17. 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 necessary to expand the scope of the current, or next, review.

Review of Measures Following Balance-of-Payments Consultations

18. In those cases in which the Council has approved specific recommendations by the Committee, the rights and obligations of contracting parties shall be assessed in the light of those recommendations.

19. In those cases in which the Committee has been unable to agree on a specific recommendation, the question of the consistency of the measures under review with the Articles and this Declaration has not been resolved. The consulting contracting party or affected contracting parties can, if they wish, attempt to resolve the question in the Council. Alternatively, affected contracting parties can, if they wish, pursue the matter through normal GATT dispute settlement procedures pursuant to Articles XXII and XXIII.

20. No contracting party can withdraw concessions from a contracting party applying balance-of-payments measures without an authorisation by the CONTRACTING PARTIES pursuant to Article XXIII.

FOOTNOTES

¹A list of contracting party signatories to this undertaking should be annexed to this Declaration. (OECD members and other contracting parties ready to commit to this undertaking should become signatories as part of the Uruguay Round. The list would remain open for future signature by other contracting parties.)

²The term "price-based measures" is meant to include temporary import or tariff surcharges, uniformly applied, including on items with bound tariff rates. In addition, consideration can be given to including prior import deposit requirements, consistent with the provisions of Article XV relating to exchange restrictions and the IMF.

³In conformity with the provisions of Article XII(3)(b) and XVIII:10, restrictions need not be applied on the importation of essential products. Essential products in this case shall be taken to mean products which meet critical consumption or industrial needs, where the unrestricted availability of imports is crucial to assist the growth and exports of a contracting party adjusting to balance-of-payments difficulties. The existence of domestic productive capacity shall not be the determinant of a product's designation as essential or nonessential. Any such departure from the principle of uniformity shall be specifically justified and all relevant information provided as to the reasons for the exclusion granted to certain products.

⁴Consideration 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 examined could include:

- (a) a standstill on the introduction or intensification of QRs applied for balance-of-payments purposes;
- (b) a time schedule for the phase-out of existing QRs; such a schedule could provide for degressivity by specifying progressively smaller proportions of total import value or import items which can be covered by QRs.

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.