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MEMORANDUM BY THE ARGENTINE DELEGATION CONCERNING BALANCE-OF-PAYMENTS ASPECTS TO BE CONSIDERED WITHIN THE FRAMEWORK OF GATT

The attached memorandum by the representative of Argentina, Ambassador Gabriel O. Martinez, is being circulated to the Group in accordance with paragraphs 19 and 20 of CG.18/2 as a contribution to the further discussion on the subject of trade measures taken for balance-of-payments purposes at the third meeting of the Group to be held on 22-23 June 1976.

MEMORANDUM BY THE ARGENTINE DELEGATION CONCERNING BALANCE-OF-PAYMENTS ASPECTS TO BE CONSIDERED WITHIN THE FRAMEWORK OF GATT

At the meeting held by the Consultative Group of Eighteen on 24 and 25 February 1976, there was an interesting discussion concerning trade measures adopted for balance-of-payments reasons and the possible amendment of GATT procedures governing this subject, either through the revision of the relevant provisions of the General Agreement or by the establishment of more appropriate procedures than those hitherto applied by the Balance-of-Payments Committee. At the close of this debate, which has been summarized by the secretariat in document CG.18/2, it was agreed that the problem should be approached from two angles, concerning respectively short-term improvements in procedure and that of longer-term questions of substance. So far as the first aspect is concerned, the United States delegation, which had previously submitted a preliminary position paper to the Consultative Group, undertook to prepare for the next meeting a paper which would present the proposed procedural changes in the form of a recommendation. For its part, the Argentine delegation accepted a commitment to submit to the Group another paper on the problems of substance to which the revised procedures should be adapted. In the light of that decision, the Argentine delegation now submits hereafter, some concrete ideas relating to balance-of-payments matters in which it endeavours to highlight some problems which, in its opinion, have not been taken into account either in the provisions or in the procedures at present in force with respect to the special problems facing the developing countries in this field.

1. The acute balance-of-payments disequilibrium frequently confronting the developing countries originates - as is generally recognized - on the one hand in the structural inadequacies of their economies, which make them exceedingly vulnerable to external factors in view of their increasing reliance on imports to facilitate their development process, and, on the other, in the protectionist policies of developed countries which give rise to very serious distortions in the trade flows due to their significant share in international trade.

The present text of the General Agreement (including Part IV) contains no adequate provisions for dealing with such situations in a positive way. It is therefore necessary to devise the appropriate means in order to fill this gap.

2. This substantive problem thus stated in global terms, may be broken down into various aspects for analytical purposes:

(a) in the first place, consideration should be given to the symmetry to be demanded as regards the obligations of those contracting parties whose balances of payments yield a surplus - often said to be of a structural nature - and which nevertheless maintain import restrictions without being subject, under GATT provisions, to a joint scrutiny in order to prove the

legality of the measures concerned or to undertake to abolish those measures within a specific period of time. This is done neither within the Committee on Balance-of-Payments Restrictions nor in any other body, unless some other contracting party initiates specific action under Articles XIX, XXII or XXIII. In this respect some machinery should be devised that would allow for ex officio action by the CONTRACTING PARTIES, acting jointly, in order to consider whether the restrictions maintained by countries with balance-of-payments surpluses are justified or not under the General Agreement. In the absence of any justification, the way should be open to resort forthwith to a procedure enabling the CONTRACTING PARTIES acting jointly, to evolve findings and recommendations in each case, in conformity with pre-established criteria, concerning the extent of the infringement, the magnitude of the injury caused to other countries and the range of the alternative courses open for the purpose of redressing the injury in question in favour of the countries affected.

(b) In order to achieve the symmetry referred to, adequate provisions would have to be introduced into the General Agreement, considering that Articles XIX, XXII and XXIII do not satisfy the above-mentioned requirements, do not constitute a symmetrical counterpart to the provisions regarding restrictions for balance-of-payments purposes, and, in addition, have no positive significance inasmuch as, on the one hand, the CONTRACTING PARTIES have no clear function or capacity as an arbitration body and, on the other, the present rules, in the last resort, make provision only for possible retaliatory measures, the applicability of which - at least in the particular case of the developing countries - gives rise to certain doubts.

(c) In the case of the balance-of-payments measures, one should bear in mind that there has not been very frequent invocation of Article XXIII because of the joint action envisaged in Articles XII and XVIII, involving the analysis of each case and the formulation of conclusions by the CONTRACTING PARTIES, after previously meeting as the Balance-of-Payments Committee, as to the nature of the difficulties experienced by a country, alternative corrective measures which may be available and the effect of the measures on third countries.

(d) Another respect in which the General Agreement is seriously defective - especially so far as the developing countries are concerned - is that concerning joint action by the CONTRACTING PARTIES where one member is experiencing balance-of-payments difficulties. From this point of view, the approach of the General Agreement is negative, because it is concerned not so much with co-operation with the country in difficulties with a view to assisting it in overcoming such difficulties, as with ensuring that the import restrictions which it imposes - the adverse effect of which on its own development apparently passes unnoticed - do not injure the trade of the other members. For this purpose, special care is taken to ensure the fulfilment of a number of requirements laid down in Articles XII and XVIII and provision is made for the making of recommendations concerning the restrictions applied - non-compliance with which is liable to lead to retaliatory measures.

(e) The absence of positive provisions in the General Agreement is self-evident, for the Agreement does not even recognize the need to grant assistance to the country faced with a dangerous fall in its reserves in order that the process may be reversed. Obviously, for the country affected and for the GATT members as a whole, it would be more effective if that country were provided with some kind of additional trading opportunities for a limited period, and a collective guarantee in order to secure financial support of a bilateral nature or from international financing institutions, under adequate conditions and to the extent needed in order to meet the serious problems which affect it.

(f) Other significant gaps in the existing provisions derive from the failure to apply effectively Part IV of the General Agreement, including the obligation of the developed countries to refrain from introducing import barriers on products of particular interest to the developing countries. If the undertakings embodied in Article XXXVII had been effectively implemented, the developing countries should have been exempted from the import restrictions maintained by developed countries for balance-of-payments reasons. On the contrary, they have been granted exemptions only in exceptional cases, as is proved by the evidence available in GATT, and consequently they have suffered in an unfair manner the consequences of problems which were not of their making.

(g) Nor is Part IV taken into account in appraising the measures adopted by developing countries in order to safeguard their balance-of-payments equilibrium. For example, even though, under Article XXXVI, the developing countries may be enabled to use special measures to promote their trade and development, the requirements of Articles XII and XVIII have not been materially alleviated on the occasion of the reviews conducted by the Balance-of-Payments Committee.

3. In view of the foregoing, consideration should be given to the desirability and advisability of introducing into the General Agreement amendments of a juridical nature providing for differential and more favourable treatment for the developing countries within the context of the provisions relating to balance-of-payments restrictions; in particular: (a) these countries should be exempted from the scope of the restrictive measures imposed by developed countries; and (b) they should be allowed greater flexibility and tolerance with regard to the measures they are forced to adopt, it being agreed that such measures should in principle be of a non-discriminatory nature. This differential treatment should likewise be institutionalized as regards the simplified procedure for consultations with the developing countries described in document L/3772/Rev.1. This procedure should be regarded as the rule for the developing countries, and the in-depth consultation as the exception, where it is thought that this may be truly useful for the purpose of affording a complete remedy for the balance-of-payments deficits of those countries.