

UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Recognizing the provisions of Articles XII, XVIII:B of the GATT 1994 and of the 1979 Declaration on Trade Measures taken for Balance-of-Payments Purposes (hereafter referred to as the "1979 Declaration") and in order to clarify such provisions[1];

Hereby agree as follows:

Application of Measures

1. Members confirm their commitment to publicly announce, as soon as possible, time-schedules for the removal of restrictive import measures taken for balance-of-payments purposes. It is understood that such time-schedules may be modified as appropriate to take into account changes in the balance-of-payments situation. Wherever a time-schedule is not publicly announced, justification shall be provided as to the reasons therefor.
2. Members confirm their commitment to give preference to those measures which have the least disruptive effect on trade. Such measures (hereafter referred to as "price-based measures") shall be understood to include import surcharges, import deposit requirements or other equivalent trade measures with an impact on the price of imported goods. It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied in excess of the duties inscribed in the schedule of a Member. Furthermore, the amount by which the price-based measure exceeds the bound duty shall be clearly and separately indicated under the notification procedures of this Understanding.
3. Members shall seek to avoid the imposition of new quantitative restrictions for balance-of-payments purposes unless, because of a critical balance-of-payments situation, price-based measures cannot arrest a sharp deterioration in the external payments position. In those cases in which a Member applies quantitative restrictions, justification shall be provided as to the reasons why price-based measures are not an adequate instrument to deal with the balance-of-payments situation. A Member maintaining quantitative restrictions shall indicate in successive consultations the progress made in significantly reducing the incidence and restrictive effect of such measures. It is understood that not more than one type of restrictive import measure taken for balance-of-payments reasons may be applied on the same product.

4. Members confirm that restrictive import measures taken for balance-of-payments reasons may only be applied to control the general level of imports and may not exceed what is necessary to address the balance-of-payments situation. In order to minimise any incidental protective effects, restrictions shall be administered in a transparent manner. The authorities of the importing Member shall provide adequate justification as to the criteria used to determine which products are subject to restriction. As provided in Articles XII:3 and XVIII:B:10, Members may, in the case of certain essential products, exclude or limit the application of surcharges applied across the board or other measures applied for balance-of-payments reasons. The term essential products shall be understood to mean products which meet basic consumption needs or which contribute to the Member's effort to improve its balance-of-payments situation, such as capital goods or inputs needed for production. In the administration of quantitative restrictions, discretionary licensing shall be used only when unavoidable and be progressively phased out. Appropriate justification shall be provided as to the criteria used to determine allowable import quantities or values.

Procedures for Balance-of-Payments Consultations

5. The 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 Members indicating their wish to serve in it. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved by the GATT 1947 Council on 28 April 1970 and set out in BISD, Eighteenth Supplement, pages 48-53 (hereafter referred to as "Full consultation Procedures"), subject to the provisions set out below.

6. A Member applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures shall enter into consultations with the Committee within four months of the adoption of such measures. The Member adopting such measures may request that a consultation be held under Article XII:4(a) or Article XVIII:12(a) as appropriate. If no such request has been made, the Chairman of the Committee shall invite the Member to hold such consultation. Factors that may be examined in the consultation would include, inter alia, the introduction of new types of restrictive measures for balance-of-payments purposes, or an increase in the level or product coverage of restrictions.

7. All restrictions applied for balance-of-payments purposes shall be subject to periodic review in the Committee under paragraph 4(b) of Article XII or under paragraph 12(b) of Article XVIII, subject to the possibility of altering the periodicity of consultations in agreement with the consulting Member or pursuant to any specific review procedure that may be recommended by the General Council.

8. Consultations may be held under simplified procedures in the case of least-developed country Members or in the case of developing country Members which are

pursuing liberalisation efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultations may also be held when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether a full consultation should be held will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of least-developed country Members, no more than two successive consultations may be held under simplified procedures.

Notification and Documentation

9. A Member shall notify to the General Council the introduction of or any changes in the application of restrictive import measures taken for balance-of-payments purposes as well as any modifications in time schedules for the removal of such measures as announced under paragraph 1. Significant changes shall be notified to the General Council prior to or not later than 30 days after their announcement. A consolidated notification, including all changes in laws, regulations, policy statements or public notices, shall be made available to the MTO Secretariat on a yearly basis for examination by Members. Notifications shall include full information, as far as possible, at the tariff line level, on the type of measures applied, the criteria used for their administration, product coverage and trade flows affected.

10. At the request of any Member, notifications may be reviewed by the Committee. Such reviews would be limited to the clarification of specific issues raised by a notification or examination of whether a consultation under Article XII:4(a) or Article XVIII:12(a) is required. Members which have reasons to believe that a restrictive import measure applied by another Member 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 Members. Without prejudice to the right of any member of the Committee to seek appropriate clarifications in the course of consultations, questions may be submitted in advance for consideration by the consulting Member.

11. The consulting Member shall prepare a Basic Document for the consultations which, in addition to any other information considered to be relevant, should include: (a) an overview of the balance-of-payments situations 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 restrictions applied for balance-of-payments reasons, their legal basis and steps taken to reduce incidental protective effects; (c) measures taken since the last consultation to liberalise import restrictions, in the light of the conclusions of the Committee; (d) plan for the elimination and progressive relaxation of remaining restrictions. References may be made, when relevant, to the information provided in other notifications or reports made to the MTO. Under Simplified Consultations, the consulting Member shall

submit a written statement containing essential information on the elements covered by the Basic Document.

12. The MTO 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 developing country Members, the Secretariat document will include relevant background and analytical material on the incidence of the external trading environment on the balance-of-payments situation and prospects of the consulting Member. The technical assistance services of the MTO Secretariat shall, at the request of a developing country Member, assist in preparing the documentation for the consultations.

Conclusions of Balance-of-Payments Consultations

13. The Committee shall report on its consultations to the General Council. In the case of full consultations, the report should indicate the Committee's conclusions on the different elements of the plan for consultations, as well as the facts and reasons on which they are based. The Committee shall endeavour to include in its conclusions proposals for recommendations aimed at promoting the implementation of Articles XII, XVIII:B, the 1979 Declaration and this Understanding. In those cases in which a time-schedule has been presented for the removal of restrictive measures taken for balance-of-payments reasons, the General Council may recommend that, in adhering to such a time-schedule, a Member shall be deemed to be in compliance with its GATT 1994 obligations. Whenever the General Council has made specific recommendations, the rights and obligations of Members shall be assessed in the light of such recommendations. In the absence of specific proposals for recommendations by the General Council, the Committee's 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 whether Full Consultations are required.

1. Nothing in this Understanding is intended to modify the rights and obligations of Members under Articles XII or XVIII:B of the GATT 1994. The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes may be invoked with respect to any matters arising from the application of restrictive import measures taken for balance-of-payments reasons.