

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposals Regarding the Balance-of-Payments Provisions of the General Agreement
on Tariffs and Trade 1994 in Terms of Paragraph 9(a)(i)
of the Geneva Ministerial Declaration

Communication from India

The following communication, dated 4 October 1999, has been received from the Permanent Mission of India.

Issues

1. Article XVIII:B of the General Agreement on Tariffs and Trade, and the 1994 Understanding on Balance-of-Payments Provisions of the GATT recognize that Members whose economy can only support low standards of living and are in the early stages of development tend to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade when they are in rapid process of development. Thus, there is recognition of the tendency of development itself to generate balance-of-payments difficulties, as well as the need to safeguard the external position of developing countries and to ensure a level of reserves adequate for implementation of programmes of economic development through control of the general level of imports over a period of time as the progress of development programmes creates new demands.
2. Therefore, Article XVIII:B and the associated 1994 Understanding are intended to authorize protective or other measures affecting imports, including quantitative restrictions, for balance-of-payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by programmes of economic development of developing-country Members. The criteria under Article XVIII:9 are intended to differ from those applied to developed-country Members under Article XII:2.
3. Similarly, Article XVIII:9 itself recognizes that there may be special factors that may be affecting the reserves of a Member or such Member's need for reserves. Article XVIII:11 itself gives further recognition to the need to pay due regard to the need to restore equilibrium in its balance-of-payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources in the carrying out its domestic policies by the Member concerned. Most importantly, the Note Ad Article XVIII:11, to the second sentence of Article XVIII:11, provides that the second sentence shall not be interpreted to mean that a Member is required to relax or remove restrictions if such relaxation or removal would thereupon produce conditions justifying the intensification or institution, respectively, of restrictions under Article XVIII:9. Further, the proviso to the second sentence adds the requirement that no Member shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under Article XVIII:B. Article XVIII:11 and the Note thereto make it clear that:

- When the restrictions are relaxed or removed the level of imports does not rise at once but only after traders and investors have adjusted to the new situation. This provision would therefore have no practical applicability if the term “thereupon” were given the meaning “at once”. It may be necessary to clarify that this term means “as a direct consequence” rather than “at once”.
- In interpreting the proviso and the Note to Article XVIII:11, the Balance-of-Payments Committee should more explicitly recognise and consider the greater need for reserves of developing countries for implementing their programmes of economic development and that these programmes entail the financing of infrastructure needs through foreign capital.

4. However, recent rulings and recommendations of the panel and the Appellate Body that were adopted by the Dispute Settlement Body in a particular case involving balance-of-payments measures taken under Article XVIII:B, would appear to have the result of making it extremely difficult for developing-country Members to take recourse to Article XVIII:B, besides vitiating the differences in the provisions intended through Articles XII and XVIII:B for developed- and developing-country Members, respectively. Furthermore, in view of the changing nature of the external vulnerability of developing countries, in particular to the volatility of capital flows, and the requirements to secure consistency between policies regarding the current and the capital account, the conventional criteria for the legitimacy of measures to safeguard the balance of payments in the context of WTO provisions for developing countries, including the basis for assessing the adequacy of reserves, need to be reviewed. In the context of the development of guidelines in this area for policy makers in the wake of the volatility in global capital markets that has put increasing pressure on emerging-market economies and its implications for financial management of those economies seen in recent years, Mr. Alan Greenspan, Chairman of the Board of Governors of the United States Federal Reserve System has also observed that one possible standard could be that “countries could be expected to hold sufficient liquid reserves to ensure that they could avoid new borrowing for one year with a certain ex ante probability, such as 95 per cent of the time”. Other economists have also pointed out that criteria based on imports (for instance, three months of import cover) or current-account deficits can no longer provide an appropriate basis for assessing reserve adequacy and need to be reviewed.

5. Another set of issues that arise from the above mentioned decisions of the dispute settlement mechanism relate to the competence of political organs and judicial organs of the WTO in all matters relating to import restrictions maintained under Article XVIII:B. The provisions under the Uruguay Round Agreements were intended to provide that only matters arising from the application of restrictive import measures and not those arising from the overall justification of those measures can be referred to panels and that the invocation of the DSU cannot modify any of the rights accorded to developing-country Members under Article XVIII:B, including procedural rights.

Proposal

6. The Balance-of-Payments Committee should be requested to examine all the issues that arise from the provisions of Article XVIII:B and the 1994 BOP Understanding, read along with Article XV of the GATT, and should be mandated to submit its report to the General Council in a time-bound manner. Its examination should include: (i) the jurisdiction of the Balance-of-Payments Committee and the General Council; (ii) all aspects relating to the criteria for assessing the adequacy of reserves and the justification for import measures; and (iii) the scope and applicability of the proviso to Article XVIII:11 and Note Ad Article XVIII:11.