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Committee on Trade and Development Special Session
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G-90 DOCUMENT FOR THE SPECIAL SESSION OF THE COMMITTEE ON TRADE AND DEVELOPMENT (CTD-SS) ON SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS ON THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (GATT 1994) ARTICLE XVIII: SECTION B

SUBMISSION BY SOUTH AFRICA ON BEHALF OF THE ORGANISATION OF AFRICAN, CARIBBEAN AND PACIFIC STATES (OACPS), THE AFRICAN GROUP AND THE LDC GROUP

The following communication, dated 22 November 2023, is being circulated at the request of the Delegation of South Africa on behalf of the Organisation of African, Caribbean and Pacific States (OACPS), the African Group and the LDC Group.

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1 INTRODUCTION

1. **The G-90 submits the proposals herein in pursuance of the work directed under Paragraph 2 of the 12th Ministerial Conference (MC12) of the world Trade Organization (WTO) Outcome Document (WT/MIN(22)/24 – WT/L/1135).** This contribution seeks to advance work on the review of special and differential treatment (SDT) with a view to strengthening them and making them more precise, effective, and operational in line with paragraph 44 of the Doha Ministerial Declaration.

2. The submission of the textual proposals in relation to Section B of the GATT Article XVIII builds on the G-90 submission presented to the Special Session of the Committee on Trade and Development (CTD-SS) contained in document JOB/TN/CTD/2 - JOB/TNC/106 as part of the ten Agreement-Specific Proposals (ASPs) that the G-90 is tabling for negotiations towards outcomes by latest MC13, in line with and consistent with the roadmap that was proposed and presented by G-90 to the CTD-SS and subsequently agreed by the committee at its meeting on 20 March 2023.

2 THE RATIONALE BEHIND THE G-90 AGREEMENT SPECIFIC PROPOSALS

3. The G90 recalls the following key principles towards realisation of SDT provisions that are precise, effective and operational, in line with the negotiating mandate:

- SDT for developing and least developed countries is an integral part of the multilateral trading system architecture and a treaty embedded right.

- The mandate under paragraph 44 of the Doha Declaration and reaffirmed at MC12 is to review SDT provisions under the covered Agreements with a view to strengthening them and making them more precise, effective and operational.

4. The G-90 is not seeking blanket exemptions from commitments, but instead seeks to ensure effective implementation of existing S&D provisions. The proposals aim to operationalize the collective commitments of the WTO Membership in several WTO agreements to facilitate the effective integration of developing and least developed countries (LDCs) into the multilateral trading system.

5. SDT is not confined to transitional periods and capacity building and technical assistance, but should be intrinsically embedded in the trade rules to allow policy flexibility to developing countries and LDCs to achieve their development objectives, and under conditions of certainty.

6. The G-90 proposals have been crafted with a view to ensuring stability, predictability and transparency in the implementation of existing S&D provisions, and thus strengthening a key area of the multilateral trading system in favour and benefit of the interests of developing countries, including LDCs. These proposals are the result of careful and detailed deliberations among G-90 members, taking into account the needs of members at different levels of development.

3 ABOUT GATT: ARTICLE XVIII - SECTION B

7. Article XVIII-B GATT was meant to provide developing countries the needed policy space to undertake measures in light of balance of payments (BoP) challenges emerging in the context of their longer-term economic development and considering the risks emanating from the external environment. Yet, the flexibility afforded to developing countries under Article XVIII:B is limited by the complex procedural conditions that came to be attached to it, particularly under the '*Understanding on the Balance-of-Payments Provisions*', undermining the ability to benefit from this flexibility. The way this Article has been operationalized tends to put the focus on temporary liquidity problems. This leaves unaddressed the challenges that developing countries face in order to meet their longer-term financing needs and does not account for many of the current challenges developing countries face, which are rooted in the financial vulnerabilities and structural weaknesses they face as a result of their roles in the international trade and capital markets.

8. The G90 had highlighted in previous submissions that the use of BoP provisions of GATT Article XVIII had declined since the inception of the WTO, due to more stringent and over-elaborate procedures. Only around 14 developing countries have attempted to use Article XVIII:B without much success. Any attempts to introduce BoP measures have been met by stringent resistance from developed countries and developing countries are typically cajoled to withdraw their requests. The recent experience of Ecuador in the BoP Committee is instructive, as the Member's measure was subject to 6 rounds of consultations with members in the Committee between June 2015 and July 2017 without reaching any consensus.

4 THE CASE FOR STRENGTHENING SPECIAL AND DIFFERENTIAL TREATMENT UNDER GATT: ARTICLE XVIII – SECTION B

9. Many developing and least developed countries (LDCs) run a persistent and sometimes large current account deficit (CAD) (See *Annex 1*). This chronic condition, which they have to consistently manage as part of their longer-term developmental trajectories, is closely linked to how these economies are inserted in global real and financial markets, consequently to their position in international trade and the terms of trade they face as well as their exposure to international capital markets.

10. Adverse terms of trade and continued dependence on commodity exports[1] have made most developing countries and LDCs vulnerable and prone to chronic CADs or shallow surpluses. Primary products continue to be dominant in the export composition of many developing counties. This is coupled with an inability to effectively pursue economic diversification and industrialization, and to move towards production and exports of higher value-added that could contribute to advancing their developmental trajectories. As pointed out repeatedly by many developing countries Members of the WTO, the solutions are often restrained by the current trade rules, which were designed with the absence of many developing countries and without accounting for their longer-term development needs. In the context of the latest polycrisis, including the inflation shock and international monetary tightening, and its backdrop of health, food and climate crises, these vulnerabilities have been further accentuated.

11. Commodity dependence poses balance of payments risks and imbalances because of the inherent and exacerbated commodities' price volatility. Commodity dependant developing countries (CDDCs) are vulnerable to negative shocks that affect the quantities and/or the prices of the

[1] i.e. where commodities on average constitute more than 60 per cent of the value of exports. See: UNCTAD, 'The State of Commodity Dependence' Report (2023), available at: https://unctad.org/publication/state-commodity-dependence-2023

commodities exported, along other types of supply or demand shocks that impact the economy.[2] These shocks in turn result in volatile commodity prices. An increase in the volatility of commodity prices can then lead directly to an increase in the volatility of terms of trade.[3] Terms of trade shocks have serious adverse implications for CDDCs, and may harm growth, worsen distribution of income, and raise the odds of highly disruptive currency crises.[4]

12. These challenging conditions are compounded given the expansion of unilateral responses by developed countries to global collective challenges, such as climate change, through interventions such as carbon-border adjustment measures (CBAM), and an expansion of localization policies and diversion of finance domestically with little regard to the principle of common but differentiated responsibilities (CBDR) and transition finance, which were central to the Paris Agreement. This in effect increases trade protectionist measures on a wide range of commodities and manufactured goods on the grounds of enforcing climate change mitigation.[5] In the medium to longer term, the protracted recovery of many developing countries from the latest polycrisis risks being derailed by these unilateral policies, along with renewable commodity extraction, and prohibitive intellectual property regimes that dissuades effective transfer of climate technology.[6] Many developing countries have noted how such measures will be disproportionately taxing on their export compositions.[7]

13. In equalities in the terms of trade and related vulnerabilities in the era of digitalization and transitions towards low-carbon economies are also increasing. Developing countries might face more dependencies on imports of products and technologies while their products face higher risks of being shut out of developed countries' markets. Furthermore, several raw material producers among developing countries face the continued challenge of being locked at the lower end of value chains. As import bills increase and exports are curtailed by the inability to diversify and deepen productive capacities given the current context, BoP crises among developing countries are expected to be more frequent and severe.

14. Moreover, today developing countries are increasingly exposed to challenges induced by the external financial environment and shocks that are beyond their control. In the context of the latest economic crisis, including the inflation shock and international monetary tightening, it has been clearly demonstrated how policy decisions in reserve-currency countries have had major repercussions and negative spill-overs on conditions in many developing countries. These monetary policy decisions have a ripple effect given the central role of the dollar in the global economy and the reliance on the dollar for trade and borrowing on the international markets.[8] These decisions affect the world financial markets by "a priori attracting capital flows away from the developing world, pushing upwards their domestic costs of borrowing and creating pressures in favor of depreciation of their exchange rates".[9]. Persistent global inflation and a prolonged period of higher U.S. interest rates have increased the risk of economic and social instability in many lower-income and some middle-income countries.

15. These monetary policy decisions in reserve-currency countries have significant impacts on countries with large debts, who have borrowed externally in foreign currencies to finance their

[2] The size and impact of transitory shocks depend on the resilience of the country concerned, and of the agents.

[3] This linkage between supply-demand shocks and volatility in commodity prices is statistically clear and visible even on an annual basis.

[4] Avom. D, Brice Kamguia, Joseph Pasky Ngameni, and Henri Njangang (2021): How does terms of trade volatility affect macroeconomic volatility? The roles of financial development and institutions, International Economics, Volume 168, December 2021, Pages 98-114

[5] Juan Carlos Moreno-Brid, Lorenzo Nalin, Edgar Perez-Medina (February 2023), 'Current External Challenges to the Economic Expansion of Emerging Markets', Institute for New Economic Thinking, page 12.

[6] Ibid, Institute for New Economic Thinking, page 12. The paper points out that "industrial policies adopted by several developed economies aimed at re-sourcing diverse processes/links of key global value chains, reflecting a shift in objectives in favor of resilience vis-à-vis just-in-time lean inventory management and cost-reduction considerations".

[7] See for example submission by India to the Committee on Trade and Environment entitled 'Concerns on Emerging Trends of Using Environmental Measures As Protectionist Non-Tariff Measures' (JOB/TE/78), 2023.

[8] See: Francesco Guerrera, 'Why the Dollar Keeps Winning in the Global Economy', available at: https://www.reuters.com/breakingviews/global-markets-breakingviews-2023-02-28/, and https://african.business/2023/05/african-banker/interest-rates-hikes-exact-high-price-in-africa

[9] Supra n. 5, page 12.

chronic current account deficits. Many expanded borrowing in the era of low interest rates[10] to offset the financial impact of the COVID-19 pandemic and then later the effect of higher prices caused by the war in Ukraine. Downward pressure on their currencies exacerbates their debt obligations. It is also important to recall that the COVID-19 pandemic struck during what was already a very challenging period for developing countries as they were still reeling from the effects of the 2008 financial and economic crisis.[11] The financial turmoil from the 2008 crisis and the significant drop in commodity prices had already triggered sharp currency devaluations in developing countries, that made it significantly harder for them to enact effective stimulus in the wake of Covid-19 without facing binding foreign exchange constraints. Furthermore, many developing countries' economies were already showing recessionary signs in the last quarter of 2019.

16. Generally, developing countries face a series of interconnected shocks emanating from a highly unequal international financial architecture, that reproduces structural inequalities between countries, and disproportionately penalizes developing countries through a multiplicity of interconnected channels including depreciating currencies, rising costs of imports, higher inflation, especially food price inflation, rising debt servicing and borrowing costs, and worsening fiscal and current account balances. In the context of lacking reforms in the international financial architecture, developing countries face compounded challenges emanating from the increasing dependence on private capital flows, the lack of sustainability of such capital flows, decline in official development assistance, the increasing average cost of borrowing in international markets, along with the conditionalities associated with the availability of external finance.

17. From the outset, the design of international system has failed to address the intersection of trade, finance and development coherently.[12] The question of financing the structural long-term development needs of developing countries remained unresolved within the multilateral context. While trade rules and measures cannot alone provide solutions to all the challenges emanating from the operations of the international financial regime, trade rules ought to be more cognizant of the challenges emanating at the nexus of finance, trade and development and accommodative of the differences between financing required to meet imbalances created by long-term development needs and the provision of liquidity needed to meet shorter-term cyclical international payments imbalances. Trade rules ought to be reformed in order to be supportive of development processes, including the ability to respond to BoP challenges linked to advancing industrialization or launching new industries.

5 PURPOSE OF THE G-90 PROPOSAL ON SPECIAL AND DIFFERENTIAL TREATMENT UNDER GATT: ARTICLE XVIII – SECTION B

18. The G-90 proposal (see *Annex 2*) is designed to ensure that the original objective of Article XVIII: Section B is served, whereby developing countries facing BoP challenges would have meaningful access to the flexibility that this provision was intended to provide in order to allow them the policy space to respond to the unique challenges they face in their economic development process.

19. In particular, the proposal builds on the lessons learned thus far from the use and lack of use of this provision and seeks to:

- Providing needed guidance on the approach to determining the adequacy of a developing country's reserves in the context of its economic development progress and programme and clarification of the role of the Committee on Balance-of-Payments and its authority in this regard.

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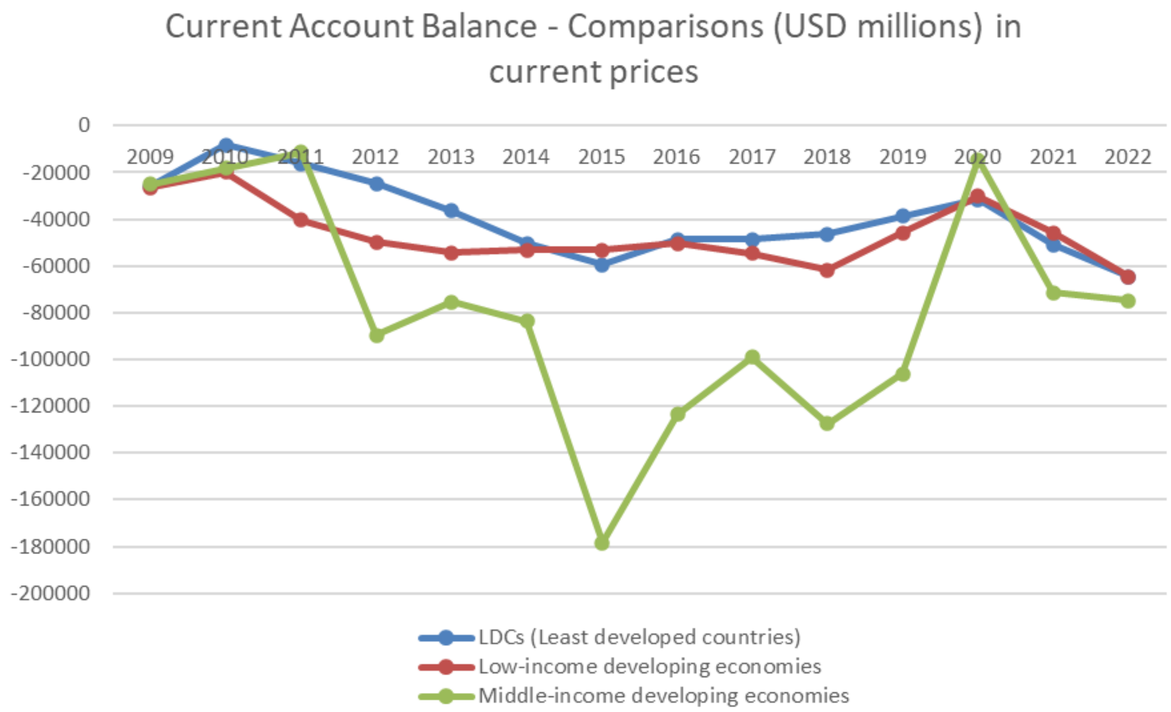
[10] See: Somesh Jha (July 2023), 'Is a global debt bomb about to explode', available https://www.aljazeera.com/features/2023/7/4/is-a-global-debt-bomb-about-to-explode

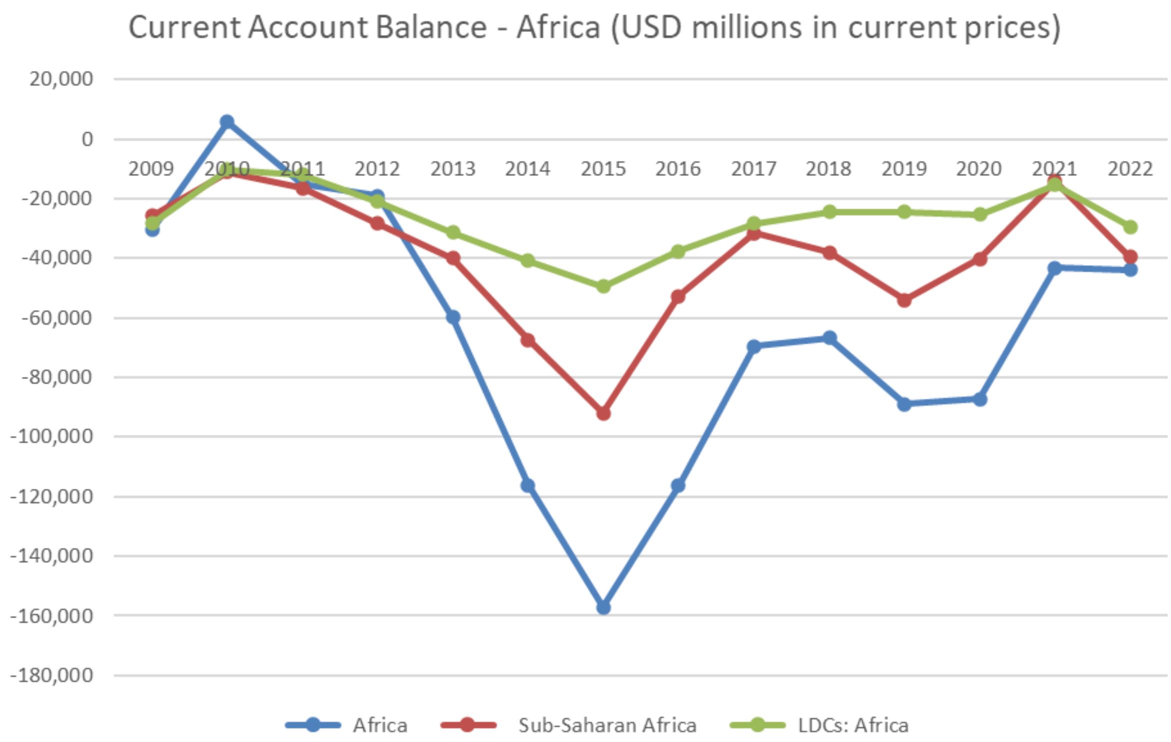
[11] IMF, World Economic Outlook (WEO) Report 2020. The report note that this crisis adds additional burden on economic capacities of developing countries, and leads to balance of payments difficulties along with socio-economic disruptions.

[12] For the historical evolution of the multilateral economic system see UNCTAD, Trade and Development Report 1984, Part II. For more details, see also: Communication from UNCTAD (2002), WT/WGTDF/W/5/Rev.1, 'The Effects of Financial Instability and Commodity Price Volatility on Trade, Finance and Development'.

- Providing for a more streamlined approach to the procedural requirements attached to this provision with a view towards enabling the concerned Members to act in a timely and efficient manner and without undermining the needed transparency.

ANNEX 1


Current Account Balance - Comparisons (USD millions) in current prices
0
-20000
-40000
-60000
-80000
-100000
-120000
-140000
-160000
-180000
-200000
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
LDCs (Least developed countries)
Low-income developing economies
Middle-income developing economies


Current Account Balance - Africa (USD millions in current prices)
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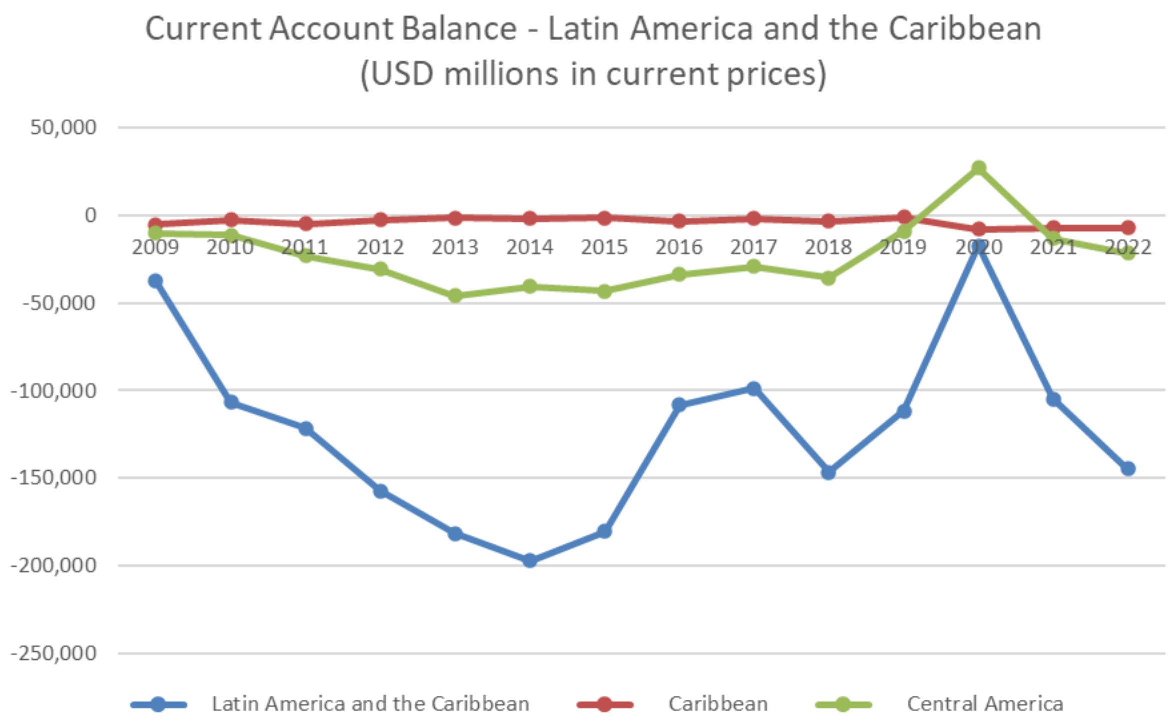
0
-20,000
-40,000
-60,000
-80,000
-100,000
-120,000
-140,000
-160,000
-180,000
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
Africa
Sub-Saharan Africa
LDCs: Africa



Source: UNCTADstat

ANNEX 2

TEXTUAL SUGGESTIONS ON THE AGREEMENT ON GATT: ARTICLE XVIII – SECTION B

Notwithstanding the obligations under Article XVIII.4a and Article XVIII:B subparagraphs 9, 10, 11, 12, and under the Understanding on the Balance-of-Payments Provisions of the GATT 1994;

1. Developing and least developed countries facing balance of payments difficulties or crisis may take measures to address these difficulties or crises, including quantitative restrictions* and tariff measures, with the aim of

    a. forestalling the threat of, or to stop, a serious decline in its monetary reserves, or

    b. in the case of inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

2. These measures may be undertaken until such time these difficulties or crisis have been deemed overcome by the concerned national authorities.

3. In drawing up its conclusions and recommendations to the General Council, including on determining the adequacy of reserves for a developing or least developed country availing itself of this [Decision] [Article], the Committee on Balance of Payments Restrictions, while considering the findings, facts, and other determination provided by the IMF in accordance with Article XV GATT, shall ensure that its conclusions and recommendations are adequate in the context of a Member's economic development policies as expressed by the concerned Member and do not undermine the objectives recognized under paragraph 2 of Article XVIII and under this [Decision] [Article]. Short term financial flows shall not be included in determining the adequacy of the concerned Member's reserves.

4. A Member undertaking measures under this [Decision] [Article] must:

    a. Notify to the Committee on Balance of Payments Restrictions the measures it undertakes within a period of time that does not extend beyond 3 months from the date of implementing those measures;

    b. Within a period that does not extend beyond one year, the concerned Member shall present to the Committee on Balance of Payments a basic document that includes;

        i. 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

        ii. a description of the restrictions applied for balance-of-payments purposes and related laws, regulations, policy statements or public notices.

5. Where a Member notifying measures under this [Decision] [Article] maintains or renews the measures beyond an initial 5 years, the Member must upon request hold consultations concerning the measures notified with other Members.

For greater certainty, actions stipulated under the last sentence of Article XVIII subparagraph 12(c)(ii) and last sentence of Article XVIII subparagraph 12(d) shall be suspended.

This Decision is without prejudice to the flexibilities Members have under various WTO agreements and rules.

** It is understood that a Member acting under this provision shall not be required to fulfil the requirements under GATT Articles XI and XII.*

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