

ARTICLE XVIII

GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT

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I. TEXT OF ARTICLE XVIII, RELEVANT INTERPRETATIVE NOTES AND UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS OF GATT 1994

Article XVIII*

Governmental Assistance to Economic Development

1. The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting parties the economies of which can only support low standards of living* and are in the early stages of development.*

2. The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry* and (b) to apply 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 their programmes of economic development.

3. The contracting parties recognize finally that, with those additional facilities which are provided for in Sections A and B of this Article, the provisions of this Agreement would normally be sufficient to enable contracting parties to meet the requirements of their economic development. They agree, however, that there may be circumstances where no measure consistent with those provisions is practicable to permit a contracting party in the process of economic development to grant the governmental assistance required to promote the establishment of particular industries* with a view to raising the general standard of living of its people. Special procedures are laid down in Sections C and D of this Article to deal with those cases.

4. (a) Consequently, a contracting party, the economy of which can only support low standards of living* and is in the early stages of development,* shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article.

(b) A contracting party, the economy of which is in the process of development, but which does not come within the scope of sub-paragraph (a) above, may submit applications to the CONTRACTING PARTIES under Section D of this Article.

5. The contracting parties recognize that the export earnings of contracting parties, the economies of which are of the type described in paragraph 4 (a) and (b) above and which depend on exports of a small number of primary commodities, may be seriously reduced by a decline in the sale of such commodities. Accordingly, when the exports of primary commodities by such a contracting party are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII of this Agreement.

6. The CONTRACTING PARTIES shall review annually all measures applied pursuant to the provisions of Sections C and D of this Article.

Section A

7. (a) If a contracting party coming within the scope of paragraph 4 (a) of this Article considers it desirable, in order to promote the establishment of a particular industry* with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between

such contracting parties concerned, they shall be free to modify or withdraw concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.

(b) If agreement is not reached within sixty days after the notification provided for in sub-paragraph (a) above, the contracting party which proposes to modify or withdraw the concession may refer the matter to the CONTRACTING PARTIES which shall promptly examine it. If they find that the contracting party which proposes to modify or withdraw the concession has made every effort to reach an agreement and that the compensatory adjustment offered by it is adequate, that contracting party shall be free to modify or withdraw the concession if, at the same time, it gives effect to the compensatory adjustment. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw the concession is adequate, but find that it has made every reasonable effort to offer adequate compensation, that contracting party shall be free to proceed with such modification or withdrawal. If such action is taken, any other contracting party referred to in sub-paragraph (a) above shall be free to modify or withdraw substantially equivalent concessions initially negotiated with the contracting party which has taken the action.*

Section B

8. The contracting parties recognize that contracting parties coming within the scope of paragraph 4 (a) of this Article tend, when they are in rapid process of development, 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.

9. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4 (a) of this Article may, subject to the provisions of paragraphs 10 to 12, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported; *Provided* that the import restrictions instituted, maintained or intensified shall not exceed those necessary:

(a) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or

(b) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of the contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

10. In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; *Provided* that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and *Provided* further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.

11. In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer justify such maintenance; *Provided* that no contracting party 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 this Section.*

12. (a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section, shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(b) On a date to be determined by them* the CONTRACTING PARTIES shall review all restrictions still applied under this Section on that date. Beginning two years after that date, contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in sub-paragraph (a) above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES; *Provided* that no consultation under this sub-paragraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this paragraph.

(c) (i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) of this paragraph, the CONTRACTING PARTIES find that the restrictions are not consistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within a specified period. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(d) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Section to enter into consultations with them at the request of any contracting party which can establish a *prima facie* case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(e) If a contracting party against which action has been taken in accordance with the last sentence of sub-paragraph (c) (ii) or (d) of this paragraph, finds that the release of obligations authorized by the CONTRACTING PARTIES adversely affects the operation of its programme and policy of economic development, it shall be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect on the sixtieth day following the day on which the notice is received by him.

(f) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to the factors referred to in paragraph 2 of this Article. Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

Section C

13. If a contracting party coming within the scope of paragraph 4 (a) of this Article finds that governmental assistance is required to promote the establishment of a particular industry* with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.*

14. The contracting party concerned shall notify the CONTRACTING PARTIES of the special difficulties which it meets in the achievement of the objective outlined in paragraph 13 of this Article and shall indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiration of the time-limit laid down in paragraph 15 or 17, as the case may be, or if the measure affects imports of a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, unless it has secured the concurrence of the CONTRACTING PARTIES in accordance with provisions of paragraph 18; *Provided* that, if the industry receiving assistance has already started production, the contracting party may, after informing the CONTRACTING PARTIES, take such measures as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.*

15. If, within thirty days of the notification of the measure, the CONTRACTING PARTIES do not request the contracting party concerned to consult with them,* that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.

16. If it is requested by the CONTRACTING PARTIES to do so,* the contracting party concerned shall consult with them as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement, and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the CONTRACTING PARTIES agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 13 of this Article, and concur* in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.

17. If, within ninety days after the date of the notification of the proposed measure under paragraph 14 of this Article, the CONTRACTING PARTIES have not concurred in such measure, the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES.

18. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the contracting party concerned shall enter into consultations with any other contracting party with which the concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. The CONTRACTING PARTIES shall concur* in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 13 of this Article, and if they are satisfied:

- (a) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or
- (b) if no such agreement has been reached within sixty days after the notification provided for in paragraph 14 has been received by the CONTRACTING PARTIES, that the contracting party having recourse to this Section has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.*

The contracting party having recourse to this Section shall thereupon be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure.

19. If a proposed measure of the type described in paragraph 13 of this Article concerns an industry the establishment of which has in the initial period been facilitated by incidental protection afforded by restrictions imposed by the contracting party concerned for balance of payments purposes under the relevant provisions of this Agreement, that contracting party may resort to the provisions and procedures of this Section; *Provided* that it shall not apply the proposed measure without the concurrence* of the CONTRACTING PARTIES.*

20. Nothing in the preceding paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. The provisos to paragraph 10 of this Article shall also be applicable to any restriction under this Section.

21. At any time while a measure is being applied under paragraph 17 of this Article any contracting party substantially affected by it may suspend the application to the trade of the contracting party having recourse to this Section of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove;* *Provided* that sixty days' notice of such suspension is given to the CONTRACTING PARTIES not later than six months after the measure has been introduced or changed substantially to the detriment of the contracting party affected. Any such contracting party shall afford adequate opportunity for consultation in accordance with the provisions of Article XXII of this Agreement.

Section D

22. A contracting party coming within the scope of sub-paragraph 4 (b) of this Article desiring, in the interest of the development of its economy, to introduce a measure of the type described in paragraph 13 of this Article in respect of the establishment of a particular industry* may apply to the CONTRACTING PARTIES for approval of such measure. The CONTRACTING PARTIES shall promptly consult with such contracting party and shall, in making their decision, be guided by the considerations set out in paragraph 16. If the CONTRACTING PARTIES concur* in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the provisions of paragraph 18 shall apply.*

23. Any measure applied under this Section shall comply with the provisions of paragraph 20 of this Article.

Interpretative Notes from Annex I

Ad Article XVIII

The CONTRACTING PARTIES and the contracting parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

Paragraphs 1 and 4

1. When they consider whether the economy of a contracting party "can only support low standards of living", the CONTRACTING PARTIES shall take into consideration the normal position of that economy and shall not base their determination on exceptional circumstances such as those which may result from the temporary existence of exceptionally favourable conditions for the staple export product or products of such contracting party.

2. The phrase "in the early stages of development" is not meant to apply only to contracting parties which have just started their economic development, but also to contracting parties the economies of which are undergoing a process of industrialization to correct an excessive dependence on primary production.

Paragraphs 2, 3, 7, 13 and 22

The reference to the establishment of particular industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an existing industry and to the substantial transformation of an existing industry, and to the substantial expansion of an existing industry supplying a relatively small proportion of the domestic demand. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

Paragraph 7 (b)

A modification or withdrawal, pursuant to paragraph 7 (b), by a contracting party, other than the applicant contracting party, referred to in paragraph 7 (a), shall be made within six months of the day on which the action is taken by the applicant contracting party, and shall become effective on the thirtieth day following the day on which such modification or withdrawal has been notified to the CONTRACTING PARTIES.

Paragraph 11

The second sentence in paragraph 11 shall not be interpreted to mean that a contracting party 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 paragraph 9 of Article XVIII.

Paragraph 12 (b)

The date referred to in paragraph 12 (b) shall be the date determined by the CONTRACTING PARTIES in accordance with the provisions of paragraph 4 (b) of Article XII of this Agreement.

Paragraphs 13 and 14

It is recognized that, before deciding on the introduction of a measure and notifying the CONTRACTING PARTIES in accordance with paragraph 14, a contracting party may need a reasonable period of time to assess the competitive position of the industry concerned.

Paragraphs 15 and 16

It is understood that the CONTRACTING PARTIES shall invite a contracting party proposing to apply a measure under Section C to consult with them pursuant to paragraph 16 if they are requested to do so by a contracting party the trade of which would be appreciably affected by the measure in question.

Paragraphs 16, 18, 19 and 22

1. It is understood that the CONTRACTING PARTIES may concur in a proposed measure subject to specific conditions or limitations. If the measure as applied does not conform to the terms of the concurrence it will to that extent be deemed a measure in which the CONTRACTING PARTIES have not concurred. In cases in which the CONTRACTING PARTIES have concurred in a measure for a specified period, the contracting party concerned, if it finds that the maintenance of the measure for a further period of time is required to achieve the objective for which the measure was originally taken, may apply to the CONTRACTING PARTIES for an extension of that period in accordance with the provisions and procedures of Section C or D, as the case may be.

2. It is expected that the CONTRACTING PARTIES will, as a rule, refrain from concurring in a measure which is likely to cause serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 18 and 22

The phrase "that the interests of other contracting parties are adequately safeguarded" is meant to provide latitude sufficient to permit consideration in each case of the most appropriate method of safeguarding those interests. The appropriate method may, for instance, take the form of an additional concession to be applied by the contracting party having recourse to Section C or D during such time as the deviation from the other Articles of the Agreement would remain in force or of the temporary suspension by any other contracting party referred to in paragraph 18 of a concession substantially equivalent to the impairment due to the introduction of the measure in question. Such contracting party would have the right to safeguard its interests through such a temporary suspension of a concession; *Provided* that this right will not be exercised when, in the case of a measure imposed by a contracting party coming within the scope of paragraph 4 (a), the CONTRACTING PARTIES have determined that the extent of the compensatory concession proposed was adequate.

Paragraph 19

The provisions of paragraph 19 are intended to cover the cases where an industry has been in existence beyond the "reasonable period of time" referred to in the note to paragraphs 13 and 14, and should not be so construed as to deprive a contracting party coming within the scope of paragraph 4 (a) of Article XVIII, of its right to resort to the other provisions of Section C, including paragraph 17, with regard to a newly established industry even though it has benefited from incidental protection afforded by balance of payments import restrictions.

Paragraph 21

Any measure taken pursuant to the provisions of paragraph 21 shall be withdrawn forthwith if the action taken in accordance with paragraph 17 is withdrawn or if the CONTRACTING PARTIES concur in the measure proposed after the expiration of the ninety-day time limit specified in paragraph 17.

Ad Articles XI, XII, XIII, XIV and XVIII

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations.

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

Members,

Recognizing the provisions of Articles XII and XVIII:B of GATT 1994 and of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209, referred to in this Understanding as the "1979 Declaration") and in order to clarify such provisions¹;

Hereby *agree* as follows:

Application of Measures

1. Members confirm their commitment to announce publicly, 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. Whenever a time-schedule is not publicly announced by a Member, that Member shall provide justification 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 (referred to in this Understanding 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 by a Member in excess of the duties inscribed in the Schedule of that Member. Furthermore, that Member shall indicate the amount by which the price-based measure exceeds the bound duty clearly and separately 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, it shall provide justification 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 purposes may be applied on the same product.
4. Members confirm that restrictive import measures taken for balance-of-payments purposes 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 minimize any incidental protective effects, a Member shall administer restrictions 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 paragraph 3 of Article XII and paragraph 10 of Article XVIII, 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 purposes. 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, a Member shall use discretionary licensing only when unavoidable and shall phase it out progressively. 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 (referred to in this Understanding as 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 Members indicating their wish to serve on it. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved on 28 April 1970 (BISD 18S/48-53, referred to in this Understanding 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 paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII as appropriate. If no such request has been made, the Chairman of the Committee shall invite the Member to hold such a 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 the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as "simplified consultation procedures") in the case of least-developed country Members or in the case of developing country

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

Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used 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 full consultation procedures should be used 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 consultation 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. On a yearly basis, each Member shall make available to the Secretariat a consolidated notification, including all changes in laws, regulations, policy statements or public notices, 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 paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII is required. Members which have reasons to believe that a restrictive import measure applied by another Member was taken for balance-of-payments purposes 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 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 restrictions applied for balance-of-payments purposes, their legal basis and steps taken to reduce incidental protective effects; (c) measures taken since the last consultation to liberalize import restrictions, in the light of the conclusions of the Committee; (d) a 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 WTO. Under simplified consultation procedures, the consulting Member shall submit a written statement containing essential information on the elements covered by the Basic Document.

12. The 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 shall 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 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. When full consultation procedures have been used, 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 and 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 purposes, 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. When simplified consultation procedures have been used, the report shall include a summary of the main elements discussed in the Committee and a decision on whether full consultation procedures are required.

II. INTERPRETATION AND APPLICATION OF ARTICLE XVIII

A. SCOPE AND APPLICATION OF ARTICLE XVIII

1. General issues

The present text of Articles XII and XVIII was agreed in the 1954-55 Review Session, and entered into effect on 7 October 1957. The principal source concerning the drafting of Articles XII and XVIII:B, C and D is the Report of the Review Working Party on "Quantitative Restrictions".² Section XVIII:A was redrafted in the Review Working Party on Schedules and Customs Administration, together with Article XXVIII; the Report of that Working Party³ is the principal source concerning its drafting.

Articles XII and XVIII:B have been amplified by detailed consultation procedures introduced in 1970, by "simplified" consultation procedures for developing countries introduced in 1972 and by provisions on the application of the Articles and consultation procedures laid down in the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes, which extend the GATT examination of the balance-of-payments provisions from quantitative restrictions alone to all trade measures taken for balance-of-payments purposes.

The Report of the Review Working Party on "Quantitative Restrictions" notes concerning the general orientation of Article XVIII as redrafted in 1955:

"...The general concept of the new Article is that economic development is consistent with the objectives of the General Agreement and that the raising of the general standard of living of the underdeveloped countries which should be the result of economic development will facilitate the attainment of the objectives of the Agreement. In that sense, the new text represents a new and more positive approach to the problem of economic development and to the ways and means of reconciling the requirements of economic development with the obligations undertaken under the General Agreement regarding the conduct of commercial policy.

"The recognition of this general concept led the Working Party to the conclusion that a suitable solution could be found in an application to the special circumstances of economic development of the principle underlying Article XIX, i.e. that when a country is faced by a conflict between a vital domestic interest and the interests of its exporters as secured by the provisions of the General Agreement, it should, in the last resort, be possible for the government of that country, without infringing its obligations under the General Agreement, to take such action as it considers to be necessary, on the condition that any other contracting party affected by such action would also be free to take such measures as may be necessary to restore the balance of benefits. It is clear that such a condition has an important restraining influence since, before taking action, the government concerned would have to weigh carefully the advantages and disadvantages of unilateral action. Moreover, the new Article contains a number of safeguards to ensure that the exercise of the right to deviate from an obligation under the Agreement would be strictly limited to cases where no other alternative measure consistent with the Agreement would be available, that the new provisions would be reserved exclusively to those under-developed countries which really need such facilities, and that the measures permitted under the Article should be directly related to the requirements of economic development and therefore would contribute in a positive manner to the growth of the country's economy as a whole. Finally, in the various sections of the Article, resort to unilateral action is only permitted after various requirements regarding consultation with the CONTRACTING PARTIES and, in certain cases, negotiation with individual governments have been complied with. Those safeguards are such that it may be reasonably expected that the number of cases in which action under Article XVIII would be taken without the concurrence of the CONTRACTING PARTIES or without agreement with the contracting parties affected would be reduced to a minimum".⁴

²L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170.

³L/329, adopted on 26 February 1955, 3S/205, 215.

⁴L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 179-180, paras. 35-36.

2. Preamble: paragraphs 1-6

The Report of the Review Working Party on “Quantitative Restrictions” notes that

“The *Preamble* contains the recognition of the general principles governing the Article and attempts to define the special problems which economic development may raise for countries having a low standard of living. It also sets out the criteria by which the contracting parties would be considered to be entitled to the facilities of this Article.”⁵

(1) “the objectives of this Agreement”

During the Review Session, when the present text of Article XVIII was drafted, it was also agreed to incorporate the amended text of the Preamble to the General Agreement into the General Agreement as a new Article I entitled “Objectives”. However, this change did not enter into effect because the Protocol Amending Part I and Articles XXIX and XXX did not achieve the necessary unanimous approval and was abandoned. See also references to “objectives” in the Preamble, Articles XXXVI:1 and XXXVII:2(b)(iii), and the Note *Ad Article XXXVI*:1.

(2) “the utmost secrecy”

The Note *Ad Article XVIII*, which incorporates the former text of Article XVIII:2 before the Review Session, provides that “The CONTRACTING PARTIES and the contracting parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article”. See the discussion on secrecy in balance-of-payments consultations in the chapter on Article XII.

(3) “low standards of living”; “early stages of development”

The Report of the Review Working Party on “Quantitative Restrictions” notes that

“...resort to Article XVIII would not be open to all contracting parties, but, apart from Section D, only to countries which are in the early stages of their development and whose economy can only support low standards of living. This limitation appears to be justified by the fact that it would be more difficult for countries having limited resources at their disposal and depending on primary production to rely exclusively on measures consistent with the General Agreement in order to solve the transitional problems which may arise from the implementation of programmes of economic development ...”.⁶

See the Interpretative Notes to paragraphs 1 and 4. See also the 1949 “Questionnaire relating to statements in support of measures for which a release is sought under Article XVIII”.⁷

In the 1957 Panel Report on “Applications by Ceylon,” the “Panel on Article XVIII Applications” considered the eligibility of the applicant under paragraph 4(a) to resort to Section C of Article XVIII. See paragraph 4 of this report for the various criteria used by the panel (per capita gross national product; share of manufacturing, mining and construction in the gross national product).⁸ The 1958 Report on “Consultations and Review Regarding Balance-of-Payments Restrictions” notes “the recommendation of the Chairman of the CONTRACTING PARTIES that it be placed on record that twelve of the contracting parties applying balance-of-payments import restrictions at present fulfil the requirements of Article XVIII:4 and that their restrictions be considered as being applied under Article XVIII:B rather than Article XII”.⁹

⁵*Ibid.*, 3S/182, para. 41.

⁶*Ibid.*, 3S/180-181, para. 37.

⁷Adopted on 10 August 1949, II/63-65.

⁸L/751, adopted on 28 November 1957, 6S/112, 113, para. 4.

⁹L/931, adopted on 22 November 1958, 7S/90, 92, para. 8. The twelve contracting parties referred to were: Brazil, Chile, Ghana, Greece, India, Indonesia, Malaysia, Myanmar, Pakistan, Sri Lanka, Turkey and Uruguay.

In a few instances consultations have been conducted concerning balance-of-payments measures without reference to either Article XII or Article XVIII.¹⁰ In another instance a contracting party has consulted concerning the same measures under Article XVIII:B and subsequently under Article XII.¹¹

(4) “particular industry”

See the Interpretative Note.

(5) “with a view to raising the general standard of living” (paragraphs 3, 7 and 13)

The Report of the Review Working Party on “Quantitative Restrictions” notes that this phrase “has been used instead of the words ‘in order to raise the general standard of living’ which was contained in earlier drafts. The Working Party felt that this more flexible form of words would cover cases where the direct contribution which the establishment of a new industry was expected to make to the general standard of living of the country was not appreciable”.¹²

The Decision on “Safeguard Action for Development Purposes” of 28 November 1979 provides as follows:

“1. The CONTRACTING PARTIES recognize that the implementation by less-developed contracting parties of programmes and policies of economic development aimed at raising the standard of living of the people may involve in addition to the establishment of particular industries¹³ the development of new or the modification or extension of existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development. Accordingly, they agree that a less-developed contracting party may, to achieve these objectives, modify or withdraw concessions included in the appropriate schedules annexed to the General Agreement as provided for in Section A of Article XVIII or, where no measure consistent with the other provisions of the General Agreement is practicable to achieve these objectives, have recourse to Section C of Article XVIII, with the additional flexibility provided for below. In taking such action the less-developed contracting party concerned shall give due regard to the objectives of the General Agreement and to the need to avoid unnecessary damage to the trade of other contracting parties.

“2. The CONTRACTING PARTIES recognize further that there may be unusual circumstances where delay in the application of measures which a less-developed contracting party wishes to introduce under Section A or Section C of Article XVIII may give rise to difficulties in the application of its programmes and policies of economic development for the aforesaid purposes. They agree, therefore, that in such circumstances, the less-developed contracting party concerned may deviate from the provisions of Section A and paragraphs 14, 15, 17 and 18 of Section C to the extent necessary for introducing the measures contemplated on a provisional basis immediately after notification.

“3. It is understood that all other requirements of the preambular part of Article XVIII and of Sections A and C of that Article, as well as the Notes and Supplementary Provisions set out in Annex I under these Sections will continue to apply to the measures to which this Decision relates.

“4. The CONTRACTING PARTIES shall review this Decision in the light of experience with its operation, with a view to determining whether it should be extended, modified or discontinued”.¹⁴

¹⁰Israel (BOP/R/90, BOP/R/101, BOP/R/113, BOP/R/129, BOP/R/142, BOP/R/155, BOP/R/170, BOP/R/187, BOP/R/195, BOP/R/210); Portugal (BOP/R/62, BOP/R/93, BOP/R/106, BOP/R/111, BOP/R/118, BOP/R/125, BOP/R/134, BOP/R/145, BOP/R/152); South Africa (BOP/R/92, BOP/R/211).

¹¹Greece (Consultations under Article XVIII:B in BOP/R/89, BOP/R/100, BOP/R/114, BOP/R/123; Article XVIII:B disinvoked, 1984; consultation under Article XII, BOP/R/160; Article XII disinvoked 1987).

¹²L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 182-183, para. 42.

¹³Footnote 1 to the Decision provides: “As referred to in paragraphs 2, 3, 7, 13 and 22 of Article XVIII and in the Note to these paragraphs”.

¹⁴L/4897, Decision of 28 November 1979, 26S/209.

(6) Paragraph 4(b)

The Report of the Review Working Party on “Quantitative Restrictions” notes that “The clause in sub-paragraph 4(b) reading ‘whose economy is in the process of development’ should not be construed as a legal limitation on the eligibility of countries to submit applications under Section D, but as a general indication of the type of economy whose need that Section is intended to meet”.¹⁵

On 19 May 1965, Australia accepted the Protocol Introducing Part IV with a Declaration stating, *inter alia*, that Australia was “one of the contracting parties referred to in Article XVIII:4(b) of the General Agreement, the economy of which is in the course of industrial development and which is seeking to avoid an excessive dependence on a limited range of primary products for its export earnings but which is not a less-developed country”.¹⁶

(7) Paragraph 5: consultations when measures of a contracting party cause a decline in export earnings of developing countries dependent on exports of a small number of primary commodities

During the 1954-55 Review Session, Pakistan proposed that when any developing country was affected by a decline in imports by a particular country of primary commodities exported by it, or by measures likely to lead to such a decline, the developing country be able to ask for consultations; the proposal stated that “where a grave threat has arisen or is likely to arise to the economy of an under-developed country consequent upon measures taken by the government or quasi-government organizations of another contracting party the former may be able, at the discretion of the CONTRACTING PARTIES, to invoke the procedure of multilateral consultations”.¹⁷ A sub-group of Review Working Party IV which studied the Pakistan proposal proposed the present text of Articles XVIII:5 and XXII:2.¹⁸ The Report of Review Working Party I on “Quantitative Restrictions” notes that the insertion of paragraph 5 had been recommended “to refer specifically to the consultation procedure under Article XXII in cases of sudden falls in the sale of primary commodities”.¹⁹

The Resolution on “Particular Difficulties Connected with Trade in Primary Commodities” adopted in the Eleventh Session in 1956 provided, *inter alia*, that the CONTRACTING PARTIES “Resolve ...that it would be appropriate for them to enter into consultations on problems arising out of the trade in primary commodities pursuant to the provisions of paragraph 2 of Article XXII and of paragraph 5 of Article XVIII ...”.²⁰ The Report of the Working Party that drafted the Resolution, on “Particular Difficulties Connected with Trade in Primary Commodities”, also noted the ruling made at the Tenth Session that the CONTRACTING PARTIES have the competence to deal, at the request of one or more contracting parties, with difficulties arising in connexion with international trade in primary commodities.²¹ The Report provides that

“...In addition to this broad competence which would make it possible for any contracting party to submit to the CONTRACTING PARTIES any particular difficulties which it was experiencing in connexion with trade in primary commodities, and which difficulties were in its view such as to impede the attainment of the objectives of the General Agreement, there are specific provisions in the General Agreement which afford an opportunity for contracting parties to secure consideration of special problems arising in this field...difficulties of this kind would be appropriate matters to bring forward under Article XXII, which, when the revised text comes into effect, will provide not only for bilateral consultations, but also for consultations with the CONTRACTING PARTIES as a whole. Finally, the revised text of paragraph 5 of Article XVIII makes particular reference to problems arising out of exports of primary commodities and for consultations regarding these problems in accordance with the provisions of Article XXII”.²²

¹⁵L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 186, para. 54.

¹⁶Status of Legal Instruments, p. 2-14.2. See also statements of Australia, New Zealand and South Africa, 2SS/SR.4 and 5. W.9/134; see also L/291.

W.9/180, “Report by Sub-Group C on the Pakistan Proposal Relating to the Off-take of Primary Commodities”; see also Spec/92/55 and the Report of the Working Party on “Organizational and Functional Questions”, L/327, adopted on 28 February, 5 and 7 March 1955, 3S/231, 244, para. 42.

¹⁹L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 182, para. 41.

²⁰Resolution of 17 November 1956, 5S/26, 27, para. 3.

²¹See ruling at SR.10/19, p. 218.

²²L/592/Rev.1, adopted on 17 November 1956, 5S/87, 88, para. 1.

The Report of the Working Party in the Fourteenth Session on “Impact of Commodity Problems on International Trade” further noted: “...The General Agreement offers facilities for bilateral and multilateral consultations of which governments may avail themselves when difficulties arise in international commodity trade. ...Contracting parties, whether importing or exporting countries, can avail themselves of the provisions of Article XXII of the General Agreement and initiate consultations under that Article when difficulties arise in connexion with their commodity trade”.²³

In 1981 Peru requested consultations with the United States under the Resolution of 4 March 1955 on the liquidation of strategic stocks and the provisions of Article XVIII:5 and Article XXII:1 of the General Agreement because of prejudice caused to the economy of Peru by the liquidation of United States strategic stocks of silver.²⁴

See also Articles XXXVI:4 and XXXVII:2, and the material in this Index on Articles XXII:2 and XXV:1.

(8) Annual reviews of measures applied under Article XVIII:C and D

The Report of the Review Working Party on “Quantitative Restrictions” notes:

“Paragraph 6 of the preamble provides for an annual review of the deviations from the provisions of the Agreement. This review is intended to provide an opportunity for discussing the effects of the measures applied under Sections C and D, the progress made by the industries in question and the general operation of these Sections. It is agreed that the CONTRACTING PARTIES shall not withdraw their concurrence or modify the terms of a concurrence during the period of validity for which it has been given, or request the withdrawal or modification of a measure applied in full accordance with the terms of that concurrence”.²⁵

All measures applied pursuant to the provisions of Section C were reviewed annually.²⁶ The seventh and most recent review, conducted at the Twenty-fourth Session in November 1967, noted that Ceylon was no longer applying measures under Section C.²⁷ No contracting party has had recourse to Section D.

3. Article XVIII:A

The Report of the Review Working Party on “Schedules and Customs Administration” notes as follows concerning the drafting of Article XVIII:A at the Review Session:

“...Section A ...permits a contracting party, which comes within the definition in paragraph 4(a) ...to enter into negotiations for the modification of a concession, in order to promote the establishment of an industry, with the country with which it was initially negotiated and with other substantially interested countries. If agreement is not reached within sixty days the matter may be referred to the CONTRACTING PARTIES. If the CONTRACTING PARTIES find that the contracting party which initiated the negotiation has made every effort to reach an agreement and has offered an adequate compensatory adjustment they can allow the contracting party to modify or withdraw the concession.

“The Working Party recommends an addition to Section A to provide that the CONTRACTING PARTIES may allow the applicant contracting party to modify or withdraw concessions in cases where it is unable, for good reasons, to provide adequate compensation; the provision corresponds to that of Article XXVIII:4(d) including the right of other contracting parties to modify or withdraw substantially equivalent concessions initially negotiated with that contracting party”.²⁸

²³L/1103, adopted on 20 November 1959, 8S/76, 84, para. 35.

²⁴L/5264.

²⁵L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 182, para. 41.

²⁶Reports of these annual reviews appear at 7S/71, 8S/97, 9S/101, 10S/106, 11S/158, 13S/65, 14S/127, and 15S/65.

²⁷15S/65.

²⁸L/329, adopted on 26 February 1955, 3S/205, 215, paras. 22-23. See also documents from the Review Session on the drafting of Article XVIII:A: reports in W.9/17, W.9/43, Sec/54/140, W.9/206, W.9/212+Corr.1; proposals in W.9/37, W.9/39, W.9/40, W.9/49.

As of March 1994, Section A of Article XVIII had been invoked nine times: by Benelux on behalf of Suriname (1958), Greece (1956, 1965), Indonesia (1983), Korea (1958), and Sri Lanka (twice in 1955 and once each in 1956 and 1957).

See also: the provisions of the Decision of 28 November 1979 on “Safeguard Action for Development Purposes” above at page 498; the Interpretative Notes to Section A; and the material under Article XXVIII:4.

(1) “to modify or withdraw a concession”

The Decisions of 19 November 1968 and 26 March 1980 on “Procedures for Modification and Rectification of Schedules of Tariff Concessions” include in their scope modifications resulting from action under Article XVIII.²⁹ The Guidelines adopted on 10 November 1980 on “Procedures for Negotiations under Article XXVIII” provide in paragraph 10 that “These procedures are in relevant parts also valid for renegotiations under Article XVIII, paragraph 7 ...”.³⁰

(2) “such concession was initially negotiated”

See Article XXVIII; see also the discussion of “floating initial negotiating rights” under Article XXVIII.

4. Article XVIII:B: Import measures for balance-of-payments reasons

(1) Paragraphs 8 and 9

The Report of the Review Working Party on “Quantitative Restrictions” notes that

“...Although all countries in balance-of-payments difficulties inevitably have a large number of problems in common and, therefore, the procedures relating to balance-of-payments restrictions are not fundamentally different, nevertheless the countries coming under Section B of Article XVIII face special additional problems which the provisions have been adjusted to meet. The Working Party has recognized that for such countries balance-of-payments difficulties will tend to be generated by development itself. In addition, paragraph 9, although modelled on paragraphs 1 and 2 of Article XII, recognizes that the reserve problem for these countries is one of the adequacy of the reserves in relation to their programme of economic development, that for this reason the word ‘imminent’ which occurs in paragraph 2(a) is inappropriate in this context, and that in order to safeguard their external position these countries may need over a period of time to control the general level of their imports in order to prevent that level from rising beyond the means available to pay for imports as the progress of development programmes creates new demands”.³¹

(a) Disinvolutions of Article XVIII:B since 1979

Contracting parties having disinvoked Article XVIII:B since 1979 are indicated in Table B following the chapter on Article XII. See also the Secretariat Note of 24 June 1988 on “Consultations Held in the Committee on Balance-of-Payments Restrictions under Articles XII and XVIII:B since 1975”.³²

²⁹L/3131, 16S/16; L/4962, 27S/25, para. 1.

³⁰C/113 and Corr.1, 27S/26, 28, para. 10.

³¹L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 183, para. 44.

³²MTN.GNG/NG7/W/46, para. 31.

(2) Paragraphs 10 and 11: application of balance-of-payments measures

The Report of the Review Working Party on “Quantitative Restrictions” notes that

“Paragraphs 10 and 11 reproduce in substance the provisions of sub-paragraph 2(b) and of paragraph 3 of Article XII. These paragraphs have however been re-arranged and the thought contained in the first sentence of sub-paragraph 3(d) of Article XII has been omitted as it was already expressed in the first two paragraphs of Section B ...”.³³

See also the material in this volume on paragraphs 2(b) and 3 of Article XII.

The 1979 “Declaration on Trade Measures Taken for Balance-of-Payments Purposes” provides that:

“The CONTRACTING PARTIES,

“*Having regard* to the provisions of Articles XII and XVIII:B of the General Agreement; ...

“*Reaffirming* that restrictive import measures taken for balance-of-payments purposes should not be taken for the purpose of protecting a particular industry or sector;

“*Convinced* that the contracting parties should endeavour to avoid that restrictive import measures taken for balance-of-payments purposes stimulate new investments that would not be economically viable in the absence of the measures;

“*Recognizing* that the less-developed contracting parties must take into account their individual development, financial and trade situation when implementing restrictive import measures taken for balance-of-payments purposes; ...

“*Agree* as follows:

“...The application of restrictive import measures taken for balance-of-payments purposes shall be subject to the following conditions in addition to those provided for in Articles XII, XIII, XV and XVIII without prejudice to other provisions of the General Agreement:

“(a) In applying restrictive import measures contracting parties shall abide by the disciplines provided for in the GATT and give preference to the measure which has the least disruptive effect on trade³⁴;

“(b) The simultaneous application of more than one type of trade measure for this purpose should be avoided;

“(c) Whenever practicable, contracting parties shall publicly announce a time schedule for the removal of the measures.

“The provisions of this paragraph are not intended to modify the substantive provisions of the General Agreement”.³⁵

In the three parallel Panel Reports in 1989 on “Republic of Korea - Restrictions on Imports of Beef” in response to complaints by Australia,³⁶ the United States,³⁷ and New Zealand,³⁸ the Panel, having decided that the consistency of restrictive measures with Article XVIII:B could be examined under Article XXIII, examined

³³*Ibid.*, 3S/183, para. 45.

³⁴Footnote 1 to the Decision provides: “It is understood that the less-developed contracting parties must take into account their individual development, financial and trade situation when selecting the particular measure to be applied”.

³⁵L/4904, adopted on 28 November 1979, 26S/205, preamble and para. 1.

³⁶L/6504, adopted on 7 November 1989, 36S/202.

³⁷L/6503, adopted on 7 November 1989, 36S/268.

³⁸L/6505, adopted on 7 November 1989, 36S/234.

Korea's Article XVIII:B justification for its import restrictions on beef, which it was contended were not justified because it was alleged that Korea no longer had balance-of-payments problems.

"...The Panel noted that Korea had maintained import restrictions on beef on balance-of-payments grounds since 1967. The Panel noted the condition in paragraph 9 of Article XVIII that 'import restrictions instituted, maintained or intensified shall not exceed those necessary: (a) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or (b) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves'. The Panel noted further that paragraph 11 required the progressive relaxation of such restrictions 'as conditions improve' and their elimination 'when conditions no longer justify such maintenance.'

"Article XV:2 of the General Agreement provided that '[i]n all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund.' The latest full consultation concerning Korea's balance-of-payments situation in the Balance-of-Payments Committee had taken place in November 1987, the report of which had been adopted by the CONTRACTING PARTIES in February 1988. The next full consultation was scheduled for June 1989. The Panel considered that it should take into account the conclusions reached by the Balance-of-Payments Committee in 1987.

"At the full consultation in the Balance-of-Payments Committee with Korea in November 1987, '[t]he prevailing view expressed in the Committee was that the current situation and outlook for the balance of payments was such that import restrictions could no longer be justified under Article XVIII:B'.³⁹ Moreover, the full Balance-of-Payments Committee had 'stressed the need to establish a clear timetable for the early, progressive removal of Korea's restrictive trade measures maintained for balance-of-payments purposes' and had expressed the expectation that 'Korea would be able in the meantime to establish a timetable for the phasing-out of balance-of-payments restrictions, and that Korea would consider alternative GATT justification for any remaining measures, thus obviating the need for such consultations'.⁴⁰

"The Panel noted that all available information, including figures published by the Korean authorities and advice provided to it in February 1989 by the International Monetary Fund, had shown that the reserve holdings of Korea had increased in 1988, that Korea's balance-of-payments situation had continued to improve at a good pace since the November 1987 consultations, and that the current economic indicators of Korea were very favourable. According to information provided to the Panel by the International Monetary Fund, the Korean gross official reserves had increased by 9 billion dollars to 12 billion dollars (equivalent to three months of imports) by end 1988. The Panel concluded that in the light of the continued improvement of the Korean balance-of-payments situation, and having regard to the provisions of Article XVIII:11, there was a need for the prompt establishment of a timetable for the phasing-out of Korea's balance-of-payments restrictions on beef, as called for by the CONTRACTING PARTIES in adopting the 1987 Balance-of-Payments Committee report."⁴¹

The Panels each suggested that the CONTRACTING PARTIES recommend that:

"(a) Korea eliminate or otherwise bring into conformity with the provisions of the General Agreement the import measures on beef introduced in 1984/85 and amended in 1988; and,

"(b) Korea hold consultations with [Australia, New Zealand and the United States] and other interested contracting parties to work out a timetable for the removal of import restrictions on beef justified since 1967 by Korea for balance-of-payments reasons and report on the result of such consultations within a period of three months following the adoption of the Panel report by the Council".⁴²

³⁹Footnote 1 to this paragraph refers to BOP/R/171, paragraph 22.

⁴⁰Footnote 2 to this paragraph refers to BOP/R/171, paragraph 23, and notes that the full text of the Balance-of-Payments Committee's conclusions is contained in Annex I to each of these Panel Reports.

⁴¹*Ibid.*, paras. 98-101, 120-123, and 114-117 respectively.

⁴²*Ibid.*, paras. 109, 131 and 125 respectively.

See also paragraphs 2, 3 and 4 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994.

(3) Paragraph 12: consultations and review of balance-of-payments measures

(a) General

The Report of the Review Working Party on “Quantitative Restrictions” notes that “it was also agreed to insert an additional provision in [sub-paragraph (f)] to the effect that when they are called upon to take any action under paragraph 12 the CONTRACTING PARTIES would take fully into account the special factors existing in the case of under-developed countries which have been described in the Preamble of the Article”.⁴³

b) Notification of balance-of-payments measures

The “Procedures for dealing with new import restrictions applied for balance-of-payments reasons” adopted in 1960 provide that “any contracting party modifying its import restrictions is required to furnish detailed information promptly to the Executive Secretary, for circulation to the contracting parties”. A footnote to this paragraph notes: “Under established procedures, contracting parties should furnish such information not only when they wish to initiate a consultation pursuant to Articles XII:4(a) or XVIII:12(a) but whenever any significant changes are made in their restrictive systems”.⁴⁴

The 1972 Decision on simplified procedures for balance-of-payments consultations under Article XVIII:12(b) (cited below *in extenso*) noted that “There are a number of developing contracting parties, mostly the newly independent countries, which maintain import restrictions. ...the adoption of the ‘streamlined’ procedures set forth in paragraph 3 above should contribute substantially to easing the way for all developing countries to define their position regarding their restrictions in relation to the GATT provisions. It is therefore proposed that, upon approval of the new procedures, the secretariat be instructed to enquire and discuss with each of these developing countries with a view to establishing a complete list of the contracting parties invoking Section B of Article XVIII of the Agreement”.⁴⁵

Paragraph 3 of the 1979 Declaration provides: “Contracting parties shall promptly notify to the GATT the introduction or intensification of all restrictive import measures taken for balance-of-payments purposes. Contracting parties which have reason to believe that a restrictive import measure applied by another contracting party was taken for balance-of-payments purposes may notify the measure to the GATT or may request the GATT secretariat to seek information on the measure and make it available to all contracting parties if appropriate”.⁴⁶

Paragraph 8 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides as follows:

“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 paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII as appropriate. If no such request has been made, the Chairman of the Committee shall invite the Member to hold such a 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.

⁴³L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 184, para. 48.

⁴⁴Procedures approved on 16 November 1960, 9S/18, para. 2.

⁴⁵L/3772/Rev.1, approved by the Council on 19 December 1972, 20S/47, 49, para. 4.

⁴⁶L/4904, adopted on 28 November 1979, 26S/205, 207, para. 3. See also discussion on this issue in CG.18/W/9/Rev. 1, 22 October 1976. Nigeria began consulting in the Committee on Balance-of-Payments Restrictions in 1984 following a “reverse notification” by another contracting party.

For instances of “reverse notification” of restrictions or requests to the Secretariat to seek information on restrictions maintained by another contracting party, see the 1987 Note by the Secretariat on “Articles XII, XIV, XV and XVIII”⁴⁷.

In 1965, procedures were adopted relating to import restrictions maintained by newly-independent countries; it was suggested to such countries that “even if they were not yet in a position to determine whether they wished to invoke the provisions of Article XVIII as justification for some or all restrictions in force, they might submit descriptive material relative to their entire import control system, without prejudice to the consistency of the measures maintained with their obligations under GATT”⁴⁸.

See also the material on notification under Article XII.

(c) *“shall ...consult with the CONTRACTING PARTIES”: procedures and timing for consultations under paragraph 12*

The Report of the Review Working Party on “Quantitative Restrictions” notes that the main difference between the provisions of Article XVIII:12 and the corresponding provisions of Article XII:4 “relates to the periodicity of the consultations under sub-paragraph (b)” and further notes that “The remarks and agreed statements referring to consultations under Article XII and which are reproduced in paragraphs 6 to 11 of this report apply also to consultations under paragraph 12 of Article XVIII”⁴⁹.

The 1979 Declaration on “Trade Measures Taken for Balance-of-Payments Purposes”⁵⁰ states, with regard to examination of balance-of-payments measures in the Committee on Balance-of-Payments Restrictions, that “The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved by the Council on 28 April 1970 (18S/48-53, hereinafter referred to as ‘full consultations procedures’) or the procedures for regular consultations on balance-of-payments restrictions with developing countries approved by the Council on 19 December 1972 (20S/47-49, hereinafter referred to as ‘simplified consultation procedures’) subject to the provisions set out below.”⁵¹

The 1970 “full consultations procedures” referred to in the Declaration describe the arrangements and procedures originally agreed in 1958 for consultations under Article XII:4(b) and Articles XVIII:12(b) as revised in the Review Session, as they had evolved to 1970. The 1970 procedures deal with the contents of the consultations, the documentation for the consultations, the time schedule for the consultations, arrangements for consultation with the International Monetary Fund, the composition of the Committee on Balance-of-Payments Restrictions, and the reports to be prepared on the consultations. Attached to the 1970 procedures are a plan of discussion for balance-of-payments consultations, and a list of points to be covered in the basic document for the consultations.⁵²

The “simplified consultation procedures” referred to in the Declaration provide:

- “(a) each year, the secretariat establishes a schedule showing the contracting parties acting under Article XVIII:B which are required to consult under paragraph 12(b) that year;
- “(b) each of these contracting parties should submit to the CONTRACTING PARTIES a concise written statement on the nature of the balance-of-payments difficulties, the system and methods of restriction (with particular reference to any discriminatory features and changes in past two years), the effects of the restrictions and prospects of liberalization;

⁴⁷MTN.GNG/NG7/W/14, dated 11 August 1987, para. 36.

⁴⁸L/14S/161.

⁴⁹L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 183-84, para. 46.

⁵⁰L/4904, adopted on 28 November 1979, 26S/205.

⁵¹26S/207, para. 6.

⁵²L/3388, presented to the Council on 28 April 1970, 18S/48.

“(c) the statements received will be circulated to all contracting parties and presented to the Committee on Balance-of-Payments Restrictions for prior consideration, so that the Committee may determine whether a full consultation is desirable. If it decides that such a consultation is not desirable, the Committee will recommend to the Council that the contracting party be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled its obligations under Article XVIII:12(b) for that year. Otherwise, the CONTRACTING PARTIES will consult the International Monetary Fund, and the Committee will follow the procedures applicable hitherto for a full consultation; and

“(d) arrangements will be made with the International Monetary Fund for the supply of balance-of-payments statistics for each country submitting a statement in accordance with paragraph (b) above”.⁵³

“It should be noted that this proposal relates only to the periodic consultations provided for in Article XVIII:12(b). Consultations under Article XVIII:12(a) will continue to follow the existing rules. Consultations with developed countries acting under Article XII will be held annually in the usual manner”.⁵⁴

Thus, the “full consultations procedures” agreed in 1970 apply to all consultations under Article XVIII:12(a); in certain cases the “simplified consultation procedures” agreed in 1972 apply to periodic consultations under Article XVIII:12(b).

The 1979 “Declaration on Trade Measures taken for Balance-of-Payments Purposes” provides that

“1. The procedures for examination stipulated in Articles XII and XVIII shall apply to all restrictive import measures taken for balance-of-payments purposes.

...

“8. In the case of consultations under Article XVIII:12(b) the Committee shall base its decision on the type of procedure on such factors as the following:

“(a) the time elapsed since the last full consultations;

“(b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;

“(c) the changes in the overall level or nature of the trade measures taken for balance-of-payments purposes;

“(d) the changes in the balance-of-payments situation or prospects;

“(e) whether the balance-of-payments problems are structural or temporary in nature.

“9. A less-developed contracting party may at any time request full consultations”.⁵⁵

Paragraphs 7 and 8 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provide as follows:

“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.

⁵³L/3772/Rev.1, approved by the Council on 19 December 1972, 20S/47, 48-49, para. 3.

⁵⁴*Ibid.*, para. 4.

⁵⁵L/4904, adopted on 28 November 1979, 26S/205, 206-208.

“Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as ‘simplified consultation procedures’) in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used 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 full consultation procedures should be used 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 consultation procedures.”

Further concerning balance-of-payments consultations, see Section II.C under Article XII.

(d) *“as to the nature of its balance of payments difficulties”*: scope of consultations under paragraph 12

General scope: The 1979 “Declaration on Trade Measures taken for Balance-of-Payments Purposes” provides that “All restrictive import measures taken for balance-of-payments purposes shall be subject to consultation in the GATT Committee on Balance-of-Payments Restrictions ...”⁵⁶

External factors adversely affecting the export trade of the contracting party applying restrictions: See the material in this Index under Article XII:4(e) and Section II.C under Article XII. The Report of the Review Working Party on “Quantitative Restrictions” notes that the Working Party agreed

“that ...the scope of consultations under paragraph 12 of Article XVIII was the same as that of consultations under Article XII and that the clarification contained in paragraph 4(e) of Article XII and in the related interpretative note would apply equally to consultations undertaken under Section B of Article XVIII”.⁵⁷

Prior consultations on balance-of-payments matters: In November 1984, proposals were made in the GATT Council by Chile regarding the use of prior consultations under Article XVIII:12 and XII:4 as a preventive mechanism aimed at avoiding import restrictions by countries suffering balance-of-payments difficulties, and focusing on obstacles to expansion of trade.⁵⁸ Following consultations on this question in the Balance-of-Payments Committee, a Report was made to the Council by the Chairman of the Committee in March 1985 in which it was recognized that, in view of the text and drafting history of Article XII:4(a) and XVIII:12(a) there was nothing to prevent a contracting party in balance of payments difficulties from holding prior consultations with the Committee under the normal procedures of these Articles.⁵⁹ Such consultations, which would be full consultations, would, *inter alia*, take due account of all factors, including external factors, affecting the consulting country’s balance of payments.⁶⁰

(e) *“the CONTRACTING PARTIES shall review all restrictions applied under this Section”*

The Interpretative Note to this provision indicates that the review of restrictions under Article XVIII:12(b) and the review to be conducted under Article XII:4(b) of restrictions under Article XII were intended to be initiated on the same date.⁶¹ This review was carried out by the CONTRACTING PARTIES in 1958-59. Part I of the resulting document discusses the financial background of the restrictions and discriminations, recent changes in the use of restrictions and the then-current level of restrictions and discrimination in the use of restrictions. Part II contains separate notes describing the restrictions in force as at the end of 1958 or early in 1959, in the twenty-five contracting parties resorting to Article XII or Article XVIII:B at that time.⁶² See also the material on Article XII:4(b) in this Index.

⁵⁶*Ibid.*, 26S/207, para. 4.

⁵⁷L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 184, para. 49.

⁵⁸C/M/183.

⁵⁹C/M/186.

⁶⁰C/132; 32S/46.

⁶¹L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 184, para. 46.

⁶²MGT(59)76, dated 30 July 1959; see also material on the background of this review at 6S/39-40, paras. 13-16.

(f) Sub-paragraphs c(ii), (d) and (e)

The Report of the Review Working Party on “Quantitative Restrictions” notes concerning paragraph (e) that it was added “in order to allow a contracting party to withdraw from the General Agreement at shorter notice than is provided in Article XXXI” in the circumstances specified.⁶³

In the three parallel Panel Reports on “Republic of Korea - Restrictions on Imports of Beef” in response to complaints by Australia,⁶⁴ the United States,⁶⁵ and New Zealand⁶⁶, the Panel examined whether the consistency of restrictive measures with Article XVIII:B could be examined within the framework of Article XXIII. “It was the view of the Panel that excluding the possibility of bringing a complaint under Article XXIII against measures for which there was claimed balance-of-payments cover would unnecessarily restrict the application of the General Agreement. This did not preclude, however, resort to special review procedures under Article XVIII:B. Indeed, either procedure, that of Article XVIII:12(d) or Article XXIII, could have been pursued by the parties in this case. But as far as the Panel was concerned, the parties had chosen to proceed under Article XXIII”.⁶⁷ See further under Article XXIII.

(4) Balance-of-payments measures other than quantitative restrictions

See the discussion of surcharges for balance-of-payments purposes under Article XII:1. Concerning waivers granted in connection with the imposition of surcharges, see under Article II and Article XXV.

The Committee on Legal and Institutional Framework, which prepared the text of Part IV, recommended an amendment to Section B of Article XVIII to permit a less-developed contracting party to use temporary import surcharges, in place of quantitative restrictions, to safeguard its balance of payments.⁶⁸ This Recommendation was referred to the Committee on Trade and Development which considered the question in an Ad Hoc Group on Legal Amendments during 1965/1966.⁶⁹

The Report of the Balance-of-Payments Committee on its work during the years 1970-1974 discusses the treatment of balance-of-payments surcharges during that period.⁷⁰

The 1979 “Declaration on Trade Measures taken for Balance-of-Payments Purposes” provides, *inter alia*: “The procedures for examination stipulated in Articles XII and XVIII shall apply to all restrictive import measures taken for balance-of-payments purposes. ...The provisions of this paragraph are not intended to modify the substantive provisions of the General Agreement”.⁷¹ However, paragraph 2 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides, *inter alia*: “It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied by a Member in excess of the duties inscribed in the Schedule of that Member.”

5. Article XVIII:C**(1) Invocation of Article XVIII:C**

Releases have been granted under Section C of Article XVIII to Cuba, Haiti, India and Sri Lanka.⁷² Some other contracting parties, including Greece⁷³, Indonesia⁷⁴ and Malaysia⁷⁵ have notified certain import regulations

⁶³L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 184, para. 47.

⁶⁴L/6504, adopted on 7 November 1989, 36S/202.

⁶⁵L/6503, adopted on 7 November 1989, 36S/268.

⁶⁶L/6505, adopted on 7 November 1989, 36S/234.

⁶⁷*Ibid.*, 36S/227, para. 97; 36S/303, para. 119; and 36S/265, para. 113 respectively.

⁶⁸L/2281, para.7 and Annex II; L/2297, para. 6.

⁶⁹13S/76; 14S/141.

⁷⁰L/4200.

⁷¹L/4904, adopted on 28 November 1979, 26S/205, 206, para. 1.

⁷²See the list of such releases in the Index of the BISD, e.g. at 38S/141.

⁷³L/3460.

⁷⁴L/5452, L/5597.

⁷⁵C/W/448, p. 38.

taken for development purposes under Section C of Article XVIII. The measures applied pursuant to the provisions of Section C were reviewed annually. The last review was conducted at the Twenty-fourth Session in November 1967.⁷⁶

The 1979 Decision on "Safeguard Action for Development Purposes" provides that "...there may be unusual circumstances where delay in the application of measures which a less-developed contracting party wishes to introduce under Section A or Section C of Article XVIII may give rise to difficulties in the application of its programmes and policies of economic development for the aforesaid purposes. ...in such circumstances, the less-developed contracting party concerned may deviate from the provisions of Section A and paragraphs 14, 15, 17 and 18 of Section C to the extent necessary for introducing the measures contemplated on a provisional basis immediately after notification".⁷⁷ See further at page 498 above.

The 1986 Report of the Group on "Quantitative Restrictions and other Non-Tariff Measures" provides that "The Group noted that some progress had been made in bringing existing quantitative restrictions into conformity with the General Agreement. ...However, it also noted that ...countries invoking ...Article XVIII:C had not followed the prescribed procedures".⁷⁸

(2) Paragraph 14: "The contracting party concerned shall notify"

Before Article XVIII was re-drafted at the Review Session of 1954-55, Article XVIII permitted the institution or maintenance of certain measures but only on the condition that a contracting party "shall notify" the existing or proposed measures in question. The 1949 Report of the Working Party on "Notifications of Existing Measures and Procedural Questions" studied the question of notification under Article XVIII. The question was raised whether "existing legislation" covered by the derogation to Part II of the General Agreement in the Protocol of Provisional Application or accession protocols (see the chapter in this Index on provisional application) had to be notified or whether it could be retained even if not notified. In response, the Working Party concluded "that there is no obligation on the part of a contracting party to notify a measure permitted by sub-paragraph 1(b) of the Protocol of Provisional Application or sub-paragraph 1(a)(ii) of the Annex Protocol".⁷⁹

In the Interpretative Note to paragraphs 13 and 14 it is recognized "that, before deciding on the introduction of a measure and notifying the CONTRACTING PARTIES in accordance with paragraph 14, a contracting party may need a reasonable period of time to assess the competitive position of the industry concerned". With respect to this Interpretative Note and its reference to "a reasonable period of time", the Report of the Review Working Party on "Quantitative Restrictions" noted: "it is recognized that this period should normally not exceed two years".⁸⁰ See also the Note *Ad* paragraph 19 of Article XVIII.

A Questionnaire on "Information to accompany notifications under Section C, and applications under Section D, of Article XVIII" was approved on 15 October 1958 for the guidance of contracting parties.⁸¹

In 1958, a Panel on Article XVIII considered certain notifications by Ceylon of measures under Article XVIII:C. The Panel noted that the Ceylon Government had imposed temporary import controls on certain products in anticipation of the concurrence of the CONTRACTING PARTIES. "...The Panel recognized that these measures, which had not been notified to the CONTRACTING PARTIES before they were put into force, were of the type contemplated in the proviso to paragraph 14 of Article XVIII: it [expressed] the hope that if the need for similar temporary measures should arise in the future, the Ceylon Government would inform the CONTRACTING PARTIES before putting such measures into force."⁸²

⁷⁶For reports on annual reviews, see: 7S/71, 8S/97, 9S/101, 10S/106, 11S/158, 13S/65, 14S/127, 15S/65.

⁷⁷L/4897, Decision of 28 November 1979, 26S/209.

⁷⁸L/6073, adopted on 26 November 1986, 33S/160, 169, para. 35.

⁷⁹GATT/CP.3/60/Rev.1, approved on 10 August 1949, II/49, 62, para. 100.

⁸⁰L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 189, para. 65.

⁸¹L/888, 7S/85-88. It was understood that this questionnaire would replace the questionnaire approved in 1949 (II/63-65) for governments notifying measures under Article XVIII as it stood prior to the Review Session.

⁸²L/932, "Notifications by Ceylon", adopted on 22 November 1958, L/932, 56S/75, 78, para. 8.

(3) Paragraph 16: “the contracting party concerned shall consult”

The Report of the Panel on Article XVIII Applications in 1957 concerning “Applications by Ceylon” notes, concerning the consultation provided for in Article XVIII:16:

“First, the Panel endeavoured, in the light of the provisions of paragraphs 1, 2 and 13 of Article XVIII, to see whether the objectives of each measure proposed was to assist the establishment of a particular industry as defined in the relevant Note to Annex [I], if such industry was established with a view to raising the general standard of living of the Ceylonese people and if the measure proposed was required to promote the establishment of that industry.

“As regards the first criterion, the Panel examined, in the light of the data submitted by the Ceylon delegation, whether there was already a domestic production of the articles covered by each Ceylonese application, or, if such a production existed, whether the programme involved a substantial transformation of an existing industry, or a substantial increase in production for an industry which satisfied at present only a small fraction of the domestic demand. As regards the second criterion, the Panel had at its disposal estimates prepared by the secretariat with respect to the added national income which the new production was likely to bring about. ...

“The Panel then considered with the Ceylon delegation the alternative measures which might be available under the Agreement, such as tariffs (or tariff quotas) and subsidies, and took into account the practical difficulties which reliance on these measures might create for the achievement of the objectives proposed by the Ceylon Government.

“Finally, as regards the possible effect of the measures on the commercial or economic interests of other contracting parties, the Panel had at its disposal estimates prepared by the secretariat concerning the probable effects of the measures not only on the imports of the products covered by the applications but also on imports of other products, such as raw materials, capital equipment and spare parts which would be required from the establishment or expansion of domestic production and consumer goods for which an increased demand should normally result from increased wages, salaries and profits”.⁸³

The 1959 Panel Report on “Notifications by Ceylon” recorded the following statements in its report:

“The Panel has been guided by its understanding that the provisions of Section C of Article XVIII are intended to be used only in special circumstances where no measure consistent with the other provisions of the General Agreement is practicable to permit a contracting party coming within the scope of Article XVIII:4(a) to achieve the purpose of promoting the establishment of a particular industry with a view to raising the general standard of living of its people. While the procedures of Section C of Article XVIII are explicitly intended to facilitate the general economic development of less-developed countries, their use must be limited to cases where the criteria set forth in that Article are fulfilled”.⁸⁴

“The Panel has noted that for a number of these notifications by Ceylon the exporting countries to be affected were often countries with a lower standard of living. It suggests that in granting future releases under Article XVIII the CONTRACTING PARTIES may wish to take account of the effects of the proposed measures not only on the economic development of the applicant country, but also on the economy of countries which may likewise be in the early stages of economic development and whose viability and solvency depended predominantly on exports”.⁸⁵

(4) Paragraph 18: consultations concerning products subject to concessions

The Report of the Panel on Article XVIII Applications in 1957 concerning “Applications by Ceylon” notes that “Whenever an application involved items the duties on which were bound under the GATT, the Panel

⁸³L/751, adopted on 28 November 1957, 6S/112, 114-115, paras. 6-9.

⁸⁴Part I of L/1113, adopted on 20 November 1959, 8S/90, 91, para. 5.

⁸⁵*Ibid.*, 8S/92, para. 7.

considered whether the conditions laid down in paragraphs 13 to 16 were fulfilled, then invited the Ceylon delegation to enter into consultations with the parties concerned in accordance with paragraph 18 of Article XVIII ...”⁸⁶

(5) Paragraph 21: “it may suspend the application of such substantially equivalent concession or other obligation”

See the Interpretative Note.

(6) Relationship between Article XVIII:B and C

In the Report of the Working Party on the “Accession of Tunisia” the representative of Tunisia pointed out that “as a provisional member, Tunisia had observed the provisions of Article XVIII:B of the General Agreement together with the appropriate procedures governing its application and would continue to do so in the future. He recalled, nevertheless, that Article XVIII:C of the General Agreement and the 1979 CONTRACTING PARTIES’ Decision on Safeguard Action for Development Purposes recognized to developing countries the right to protect infant domestic industries ...A member recommended that Tunisia not invoke Article XVIII:B to justify protective measures taken for development purposes to establish or protect infant industries. Rather, Tunisia should adhere to the provisions of Article XVIII:C or XVIII:D, or other GATT provisions as appropriate, to justify protection for these reasons ...”⁸⁷

6. Article XVIII:D

Section D of Article XVIII applies to those contracting parties within the scope of sub-paragraph 4(b). The Report of the Review Working Party on “Quantitative Restrictions” notes with regard to Section D of Article XVIII that “the scope of the Section and the procedural provisions of that Section are the same as for Section C, but all the measures without exception have to be concurred in by the CONTRACTING PARTIES before they can be introduced”.⁸⁸ A Questionnaire on “Information to accompany notifications under Section C, and applications under Section D, of Article XVIII” was approved on 15 October 1958 for the guidance of contracting parties.⁸⁹

Section D has not been invoked.

B. RELATIONSHIP BETWEEN ARTICLE XVIII AND OTHER GATT PROVISIONS

1. Article III

The Report of the Working Party on the “Accession of Costa Rica” includes a discussion of Costa Rica’s selective consumption levy. Some members of the Working Party pointed out that “neither Part IV nor Article XVIII of the General Agreement authorized the discriminatory application of levies contrary to Article III”.⁹⁰

2. Article XII

See under Article XII and at page 497.

⁸⁶L/751, adopted on 28 November 1957, 6S/112, 115, para. 10.

⁸⁷L/6277, adopted on 12 December 1990, 37S/30, 36, para. 25.

⁸⁸L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 189, para. 64.

⁸⁹L/888, 7S/85-88. It was understood that this questionnaire would replace the questionnaire approved in 1949 (II/63-65) for governments notifying measures under Article XVIII as it stood prior to the Review Session.

⁹⁰L/6589, adopted on 7 November 1989, 36S/26, 33, para. 32.

3. Article XIV

The Report of the Review Working Party on “Quantitative Restrictions” noted that “Appropriate references to Section B of Article XVIII have been introduced in the text of Article XIV; through these insertions, the application of balance-of-payments restrictions by under-developed countries are governed by the provisions of Article XIV as regards deviations from the rule of non-discrimination”.⁹¹

4. Article XXIII

See under Article XXIII for material on the relationship of that Article with Article XVIII:B and with Article XVIII:C and D.

5. Article XXIV

See references under Article XXIV to relationship with Article XVIII.

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Corresponding provisions in the Havana Charter are contained in Articles 13 and 14; in the London and New York Drafts, in Article 13; and in the Geneva Draft, in Articles 13 and 14.

The text of Article XVIII has been replaced twice. Firstly, at the Second Session in September 1948 it was decided to replace the original text of Article XVIII with provisions reflecting Articles 13 and 14 of the Havana Charter.⁹² These amendments were effected by the Protocol Modifying Part II and Article XXVI of the GATT, which entered into effect on 14 December 1948. Secondly, as noted at page 496 above, the present text of Article XVIII was agreed at the Review Session in 1954-55, where the balance-of-payments articles of the General Agreement were extensively debated in the Review Working Party on Quantitative Restrictions. Concerning the Review, see the documents listed below and the Report of the Working Party, which contains a “description of the purpose and intent of the various amendments proposed, as well as agreed statements the purpose of which is to clarify the meaning of certain provisions, with a view to facilitating the interpretation of those provisions in the future”.⁹³ At the same time, Article XVIII:A was redrafted in the Review Working Party on Schedules and Customs Administration.⁹⁴ The new text of Article XVIII, contained in the 1955 Protocol Amending the Preamble and Parts II and III of the GATT, entered into force on 7 October 1957.

⁹¹L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 177, para. 27.

⁹²See Report of the Working Party on “Modifications to the General Agreement”, adopted on 1 and 2 September 1948, GATT/CP.2/22/Rev.1, II/39, 41, para. 14.

⁹³L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170 (passage cited is in paragraph 2, 3S/170).

⁹⁴L/329, adopted on 26 February 1955, 3S/205, 215.

IV. RELEVANT DOCUMENTS*London*

Discussion: EPCT/C.I and II/PV/4

Geneva

Discussion: EPCT/A/PV/22, 23, 26, 39;
EPCT/TAC/PV/11, 19, 22, 27
Reports: EPCT/135, 162, 165, 167, 197
Other: EPCT/W.313

Havana

Discussion: E/CONF.2/C.2/SR.13, 14, 15, 23,
26
Report: E/CONF.2/C.2/41 and Add.1
E/CONF.2/45/Rev.1, 51

CONTRACTING PARTIES

Discussion: GATT/CP.3/SR.39, 40, 43, 44
GATT/TN.2/SR.3, 4, 7, 8
Reports: GATT/CP.3/60/Rev.1, G/39

Review Session

Discussion: SR.9/14, 15, 16, 25, 26, 36, 37, 38,
40, 42, 45, 47
Reports: L/332/Rev.1+Adds., L/327, L/329
3S/179-189, 215, 244
W.9/101+Add.1, 126, 154, 180,
184/Rev.1, 189, 198, 206, 208, 212,
225, 233, 236/Add.2
Other: L/189+Add.1, 272, 277, 282
W.9/17, 18+Add.1, 22, 23, 31, 32,
35, 37, 39+Add.1, 40, 43, 49, 51,
52, 106, 115, 154, 175, 189/Add.1,
196, 210, 221, 226
Sec/50/54, 134/54, 145/54, 158/54
Spec/3/55, 8/55, 10/55, 14/55,
15/55, 17/55, 26/55, 34/55, 35/55,
133/55, 138/55, 139/55, 143/55,
154-156/55, 176/55