

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4200

18 July 1975

Limited Distribution

BALANCE-OF-PAYMENTS COMMITTEE

Note by the Committee

As Council was informed (see C/M/101 page 3) a "Review of the Work of the Balance of Payments Committee 1970-74" was undertaken by the secretariat. The completed report is contained in the Appendix. Members of the Committee found certain points came to mind upon reading this report. These are listed below for the Council's information. In transmitting the report, and the points it raises the members of the Committee were in full agreement that nothing should prejudice action in the multilateral trade negotiations.

I. Treatment of import restrictions

1. There have been many cases where trade restrictions imposed for balance-of-payments purposes were not notified to GATT.
2. Some cases of surcharges and import deposits have been examined by GATT working parties set up for the purpose, while other cases were referred to the Balance-of-Payments Committee on an ad hoc basis.
3. Some surcharge cases have been the object of a waiver, while other cases were dealt with through adoption of agreed conclusions.

II. Established practice

The Committee has long had to deal with an increasing number of cases in which techniques of trade control other than quantitative restrictions were imposed for balance-of-payments reasons. Although the Committee has followed a pragmatic approach in this respect, there has been no formal adaptation of its terms of reference to established practice.

III. Follow-up action

A number of contracting parties have ceased to invoke or expressly disinvoked GATT balance-of-payments provisions after the Balance-of-Payments Committee had concluded that justification on balance-of-payments grounds no longer existed for their import restrictions. At present, the Balance-of-Payments Committee has no means to ascertain whether its recommendations to remove the restrictions have been implemented.

IV. Working arrangements

1. At present, the Committee's consultations are based on documentation provided by the consulting country, as well as background material supplied by the Fund. There are no questions or documentation prepared by the GATT secretariat.

APPENDIX

REVIEW ON THE WORK OF THE BALANCE-OF-PAYMENTS COMMITTEE: 1970-1974

1. At its last meeting in October 1974, the Committee on Balance-of-Payments Restrictions requested the secretariat to prepare the draft of a factual report on the work of the Committee over the past five years.
2. This report, which does not deal with measures taken for balance-of-payments reasons that were examined in GATT bodies (except for those listed in Annexes 4 and 5) other than the Balance-of-Payments Committee, contains the following chapters:

- I. Procedures
- II. IMF-GATT Co-operation
- III. Consultations and Examinations Held
- IV. Content of Discussions and Measures Examined
- V. Conclusions of the Committee
- VI. Representation in the Committee

I. PROCEDURES

(a) GATT provisions

3. The legal basis for the GATT consultations on import restrictions to safeguard the balance of payments is Articles XII:4 and XVIII:B(12) which provide for the initiation of consultations in the following situations. First, a country applying new restrictions or substantially raising the general level of existing restrictions is required to consult with the CONTRACTING PARTIES if possible before, if not immediately after, taking such actions. Second, a country maintaining import restrictions under Article XII or XVIII:B is required to consult with the CONTRACTING PARTIES annually, or every two years in the case of developing countries. Third, if a contracting party can establish "a prima facie case" that another contracting party is maintaining import restrictions inconsistent with Article XII, XIII or XVIII:B and that its trade is adversely affected thereby, consultations shall follow provided that direct discussions between the contracting parties concerned have not been successful. This third type of procedure has not been applied by the CONTRACTING PARTIES during the past five years.

4. The General Agreement's thus provides for the automatic initiation of consultations on import restrictions only in the case of countries invoking the General Agreement's balance-of-payments exceptions. The review of import restrictions introduced or maintained for balance-of-payments reasons by countries which have not invoked or no longer invoke GATT's balance-of-payments provisions requires a complaint by an affected contracting party. During the past five years, a number of contracting parties, e.g. New Zealand and South Africa, have ceased to invoke or expressly disinvoked the balance-of-payments provisions after the Committee had rendered negative conclusions on the balance-of-payments justification of their import restrictions. These countries then stopped consulting and the Committee as such had no means to ascertain whether its recommendations had actually been implemented.

5. Measures other than quantitative restrictions, in particular surcharges, have not been contemplated by the drafters of GATT as a means of balance-of-payments adjustment. Consequently, the General Agreement does not prescribe any specific procedures for the international review of financially-motivated trade measures other than those that restrict the quantity or value of imports. If such other trade measures, as for example surcharges on bound items, are contrary to the General Agreement, they require validation by a waiver. According to a decision adopted by the CONTRACTING PARTIES in 1956, applications for waivers should normally be considered only if submitted with at least thirty days' notice. Waivers should in general be granted only if bilateral consultations have proved unsuccessful and only if the CONTRACTING PARTIES are satisfied that the legitimate interests of affected countries are adequately safeguarded. They should normally include procedures for future consultations, provide for an annual report and, where appropriate, for an annual review of the operation of the waiver. In most cases waivers are limited in time.

(b) The Committee's terms of reference

6. The Balance-of-Payments Committee's terms of reference throughout the past five years have been "to conduct the consultations under Article XII:4(b) and Article XVIII:12(b) as well as any such consultations as may be initiated under Article XII:4(a) or Article XVIII:12(a)". The provisions of the General Agreement mentioned in these terms of reference refer to consultations with countries invoking GATT's balance-of-payments exceptions, but not to complaint-initiated consultations. Import surcharges and deposit schemes have been referred to the Committee by the Council on an ad hoc basis.

(c) Consultation procedures

7. The Committee has followed essentially the same procedures for the examination of quantitative restrictions as it has for other trade-impeding measures. These procedures have been described in detail in a note by the Chairman of the Committee (L/3388 of 27 April 1970) and need only be recalled here briefly. The consultations have regularly been based on background material supplied by the IMF and a "basic document" covering specified points (see Annex 2) prepared by the consulting

contracting party. It is the secretariat's obligation to circulate this material at least three weeks before the consultations take place. In practice, it has not always been possible to do so. The consultations are conducted according to a plan of discussions (see Annex 3) comprising four main headings:

- I. Balance-of-payments position and prospects;
- II. Alternative measures to restore equilibrium;
- III. System and methods of the restrictions;
- IV. Effects of the restrictions

8. At the conclusion of the consultations, the secretariat prepares a draft report for consideration by the Committee. The Committee's report is circulated to all contracting parties. At the same time, it is submitted to the Council for adoption and for forwarding to the next session of the CONTRACTING PARTIES for final approval.

9. In December 1972, the procedures for periodic consultations with developing countries (Article XVIII:12(b)) were simplified mainly so as to lessen the administrative burden for these countries (see Council decision on "Procedures for Regular Consultations on Balance-of-Payments Restrictions with Developing Countries" (L/3772/Rev.1 of 10 January 1973)). Experience had shown that detailed discussion every second year of the nature of the balance-of-payments problems that led to restrictions by these developing countries was not always necessary, their balance-of-payments difficulties being usually of a structural rather than a temporary nature. In order to avoid consultations becoming a mere formality in such cases, while observing the legal requirements of the GATT, it was decided that countries invoking Article XVIII:B would henceforth supply a concise statement every other year on the nature of their balance-of-payments difficulties, the system and methods of restriction, the effects of the restrictions and prospects for liberalization, etc. On the basis of the statement the Committee then determines whether a full consultation is desirable. If it is not, the Committee recommends to the Council that the contracting party be deemed to have consulted, and to have fulfilled its obligation under Article XVIII:12(b) for that year.

II. IMF-GATT CO-OPERATION

10. The legal bases for the co-operation between the IMF and the GATT are Article XV:1 of the General Agreement according to which the CONTRACTING PARTIES shall seek co-operation with the IMF enabling the two organizations to pursue a co-ordinated policy in their respective fields of jurisdiction, and Article X of the Fund's Articles of the Agreement which provides that the Fund shall co-operate "with public international organizations having specialized responsibilities in related fields". While GATT is specifically obliged to consult fully with the Fund on financial aspects of trade matters under Article XV:2 of the General Agreement, there is no corresponding obligation for the Fund to consult GATT on the commercial aspects of exchange questions. As a result, the co-operation between the

two economic organizations consists essentially of requests by the GATT for advice from the Fund on the financial aspects of trade measures imposed for balance-of-payments reasons.

11. The consultations with the Fund provided for under Article XV:2 of the General Agreement are generally initiated by a letter from the Director-General of GATT to the Managing Director of the Fund transmitting a programme of consultations and inviting the Fund to consult with the CONTRACTING PARTIES. During the consultations the Fund provides a statement assessing the country's external financial position and the most recent Fund report on economic developments in the country concerned, or when such a report is not available, a specially prepared economic background paper. The balance-of-payments assessment is presented by a Fund representative who is guided by a statement specifically approved for the purpose by the Fund's Executive Directors and who is fully briefed on the economic situation and prospects of the country concerned.

12. The Fund statements take into account the general economic situation of the consulting country, the reserve and balance-of-payments position and prospects, feasible alternative policies and other considerations. The statements generally conclude with an assessment of the country's restrictions in the light of its external financial position. Although the range of these determinations has been wide and each is carefully worded to suit the circumstances of the case, five broad types of determinations may be discerned during the period covered by the survey. First, there were determinations indicating that the country's reserve position justifies the overall level of restrictions. These determinations have generally been cast in the language of Article XII:2(a) which declares, inter alia, that "import restrictions ... shall not exceed those necessary to stop a serious decline in monetary reserves". A typical example is the following: "The Fund believes that at the present time the general level of restrictions of Iceland which are under reference does not go beyond the extent necessary to stop a serious decline in its monetary reserves".¹ In general, the Fund has related in its statements the level of restrictions with recent trends and prospects in the balance of payments, as well as the existing reserve position. In one case (1974 Greece), however, the Fund stated that "in view of the expected balance-of-payments developments, the level of restrictions, as presently administered, does not appear excessive".²

13. Second, there were Fund determinations indicating that the consulting country is justified in maintaining some restrictions but that the overall level is excessive. In the 1972 consultations with New Zealand, for example, the Fund

¹BOP/R/64, page 2

²BOP/R/75, page 2

stated that this country's reserve position was "strong enough to permit a substantially faster rate of progress in the liberalization of quantitative restrictions".¹

14. Third, the Fund provided statements declaring that the recourse to GATT's balance-of-payments exceptions is no longer justified. There were two cases of this kind. In the 1973 consultations with Spain, the Fund stated that "restrictions on imports can no longer be justified on balance-of-payments grounds".² A somewhat less categorical formulation was used in the 1972 consultations with South Africa when the Fund reported that the "payments and reserve developments should allow South Africa to take further steps to eliminate the remaining measures".³

15. Fourth, there were a number of cases where the Fund wished neither to suggest that the country had no balance-of-payments needs for restrictions nor that its situation was such as to warrant the retention of restrictions. In such cases, the Fund representative has generally conveyed the exact nuance of the Fund's views by quoting passages from the most recent Fund decisions concluding consultations on exchange restrictions. For example, in the 1973 consultations with Finland, the Fund representative quoted an Executive Board decision stating that "considerable progress has been made in liberalizing trade and payments and the Fund hopes that Finland will persist in its efforts in this regard. Continued progress would also assist in the present stabilization effort".⁴

16. Fifth, there have been cases where the Fund was not in a position to offer advice because its consultations with the country were not completed or because the economic situation had changed substantially since its last consultations.

17. Because of the confidential nature of its relations with member countries, it is difficult for the Fund to make statements to the Balance-of-Payments Committee which incorporate specific recommendations for alternative adjustment policies, although general references are often made to monetary, fiscal or income policies or to the liberalization of trade and payments. There have been particular instances, however, in which the Fund has considered the matter to be of such far-reaching importance that it has made a specific reference to alternative measures in the exchange field.

¹BOP/R/60, page 2

²BOP/R/68, page 2

³BOP/R/63, page 2

⁴BOP/R/66, page 1

18. Article XV:2 regulates to what extent the Fund's conclusions are binding upon GATT. This provision declares that in quota cases involving import restrictions GATT shall accept the determination of the Fund "as to what constitutes a serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves". Surcharges and other measures not involving import restrictions were not contemplated by the drafters of GATT as balance-of-payments adjustment measures, and Article XV therefore does not explicitly regulate such cases. However, here the general obligation of GATT to "accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balance of payments" applies.

19. The practical significance of these formal distinctions has, however, been limited. The GATT has consulted the Fund on the balance-of-payments justification for import restrictions and other measures. In both types of cases the Fund's determinations have been of the same character and have generally gone beyond merely stating what constitutes a serious decline in reserves etc., but have compared the overall level of import controls with the reserve position. During the past five years, the Committee has accepted in all cases the Fund's broad determinations. In one case the consulting country disagreed with the Fund's assessment and the Committee's decision to follow the Fund's determination.

III. CONSULTATIONS AND EXAMINATIONS HELD

20. From 1970 to 1974 inclusive there were forty-five consultations and seven examinations of request for waiver undertaken by the Balance-of-Payments Committee, involving twenty-three different countries. Four countries invoked Article XII; seventeen countries invoked Article XVIII:B; and two further countries invoked Article XVIII:B, but no agreement has been reached as to whether Article XII or XVIII:B applies.

21. The number of countries consulted or examined has been on average nine a year. Within the five-year period under review, there was one reinvocation (South Africa) and only two new invocations, both of them Article XVIII:B (Argentina in 1972 and Bangladesh after accession). The other twenty-one contracting parties consulted under invocations that dated prior to 1970.

22. Three countries disinvoked Article XII formally (Iceland, New Zealand and South Africa, the latter after stern conclusions by the Committee in 1973). Two countries invoking Article XVIII (Brazil and Uruguay) ceased to consult after the Committee's findings that they no longer applied quantitative restrictions. Spain ceased to consult in 1973 after the Committee concluded that balance-of-payments reasons no longer justified Spain's restrictions.

23. Regularity of consultations - every year under Article XII, every two years for Article XVIII - has not always been observed. In two Article XII cases, more than a year lapsed between consultations and at least nine Article XVIII:B cases have had more than a two-year lapse between consultations. This has been due to a number of reasons, e.g. inconvenient timing for the country concerned or the necessity to take into account the dates of the International Monetary Fund missions to the countries concerned.

24. For details concerning this chapter see Annex 1.

IV. CONTENT OF DISCUSSIONS AND MEASURES EXAMINED

25. The coverage of consultations has followed broadly the plan of discussion set out in BISD Eighteenth Supplement, page 52 (reproduced in Annex 3).

26. Under Part I "Balance-of-payments position and prospects", the subjects covered are varied; questions are always asked concerning the actual position of the balance of payments and on prospects for the short and medium term, as well as on the level of reserves. Any disequilibrium in the current account is examined in conjunction with the capital account position, and questions are often asked on particular details such as the level of earnings from invisibles, foreign investments, measures to encourage foreign capital inflows, the size of the external debt, exchange rate policy. The expected duration of the restrictions is considered in relation to the various balance-of-payments aspects discussed. Recently, a new consideration has been taken into account, that of uncertainty due to rising commodity prices, in particular that of petroleum, and the development of world economic conditions.

27. Under Part II "Alternative measures to restore equilibrium", discussions have tended to be vague probably partly because of the need to deal with such measures on a confidential basis. Comments are usually limited to various aspects of the consulting country's domestic economic policy. Diversification and promotion of exports are often discussed as medium and long-term alternative means to restore equilibrium. In this context better access to export markets through general liberalization of tariff and non-tariff barriers has also been mentioned. As a result, Parts I and II of the plan of discussion have tended, over the past years, to be merged into one.

28. Part III of the Plan "System and methods of restrictions" is generally the centre-piece of discussions. Probing questions are always asked on the practical operation of licensing systems (the criteria used to grant licenses), the level of quotas (the criteria used to set the size and distribution of quotas), treatment of imports from different sources and possible elements of discrimination in the operation of quantitative restrictions, and the type of imports they affect. Where it exists the rôle of State trading is usually discussed. Other elements, not necessarily listed in the indicative plan of discussion, often emerge, such

as matters relating to customs valuation, consular formalities, tariffs, other import charges and, in particular, complexities of import control procedures. The treatment of import deposits and import surcharges is described below. The use of bilateral trade and payments agreements is a recurrent item.

29. Part IV of the Plan "Effects of the Restrictions" has also tended with time to be merged with Part III. The subjects actually discussed under this heading are often more specific than general. Members of the Committee often take this occasion to query particular measures, e.g. quotas for special goods, special tax or import regulations, which are detrimental to their country's trade interests. Trade effects of the restrictions are rarely quantified. Committee members have in general used this heading to emphasize specific export interests of their countries rather than to measure the global effects of restrictions.

Import surcharges

30. Annex 4 gives an indication of the various surcharge measures applied by contracting parties during the period 1970-1974, not all of which were necessarily taken for balance-of-payments reasons.

31. Surcharges appear to have been applied in twenty-four cases, involving twenty-three contracting parties. The Balance-of-Payments Committee discussed, examined or generally dealt with ten of these cases. In two cases only did it recommend a waiver - Uruguay and Turkey. Both these cases involved extensions of waivers granted originally in 1961 and 1963, making it difficult for the Committee to depart from established practice. In two other cases - Israel and Yugoslavia - the Committee adopted a new approach by assimilating the surcharge to quantitative restrictions applied for balance-of-payments reasons, thus dispensing with the formalities of a waiver. In the other six cases, the surcharges were discussed, not always in detail, in the course of the consultations. It is not within the Committee's terms of reference to recommend a waiver unless it has been assigned the task by Council. There seems to be a trend on the part of Committee members towards adopting gradually a more flexible approach, rather than emphasize the legal requirements of GATT.

32. Of the twenty-four different surcharges, five cases were dealt with in other GATT bodies (Denmark, India, Indonesia, Pakistan and United States); three of which resulting in waivers. A further nine cases were not brought to the attention of contracting parties.

Import deposits

33. Annex 5 gives an indication of the various import deposit measures applied by contracting parties during the period 1970-1974, not all of which were necessarily taken for balance-of-payments reasons.

34. Seventeen different import deposit requirements appear to have been applied involving sixteen contracting parties. The Balance-of-Payments Committee discussed or examined seven different cases. The Committee has generally referred to the measures in its conclusions, though without giving them much emphasis; it has either noted or welcomed reduction of rates, or hoped or called for early phase-out or removal. In three cases the import deposits were discussed in the course of the consultations but not mentioned in the conclusions (Argentina, Korea and Uruguay).

35. Three cases of import deposits were examined in other GATT bodies - United Kingdom, Italy and Iceland, none of which were invoking Article XII at the time, but all of which invoked balance-of-payments reasons.

36. Seven cases were not notified to GATT and were not discussed in GATT bodies.

V. CONTENT OF THE CONCLUSIONS OF THE COMMITTEE

37. Formally, the purpose of the Committee's conclusions is to recommend to the CONTRACTING PARTIES (usually the Council in the first instance) decisions on the restrictive measures discussed in the consultations. The decisions which the CONTRACTING PARTIES are to arrive at, according to the General Agreement, differ depending on the restrictive technique used by the consulting country.

38. In the case of import restrictions, the CONTRACTING PARTIES are to determine whether the restrictions instituted, maintained or intensified meet the financial and commercial criteria set forth in Article XII or XVIII:B. If the CONTRACTING PARTIES find that the restrictions are inconsistent with GATT, they "shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified". If the inconsistency is of a serious nature, (and damage to the trade of any contracting party is caused or threatened thereby) they "shall make appropriate recommendations in securing conformity with such provisions within a specified period of time". If the consulting country does not comply with the recommendations made, "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".

39. The conclusions on import restrictions have generally followed closely the procedures set forth in the General Agreement. The conclusions reflect the result of a review of the consistency of the restrictions with the General Agreement, and where necessary, they contain recommendations to suitably modify the restrictions. There was no case where the inconsistency with the General Agreement was considered sufficiently serious to warrant a recommendation for securing conformity within a specified period of time. In two cases the Committee came to the conclusion that the country had no balance-of-payments

justification for restrictions. In one of these cases the Committee "urged" the country to eliminate the intensified restrictions (South Africa)¹ and in the other case, the Committee invited the country's Government to reconsider its position with regard to its remaining import restrictions (Spain).²

40. In the case of import surcharges on bound items, the decision to be taken, according to the General Agreement, is whether or not to grant a waiver (Article XXV:5). In examining import surcharges, the Committee's main concern has never been the question of whether or not it should recommend to the CONTRACTING PARTIES the validation of the measure through a waiver. The Committee's conclusions have focussed instead on the question of whether the surcharges meet the criteria set forth in the General Agreement for import restrictions. A typical example is the 1970 consultation on the Yugoslav special import charge. Here the Committee decided to recommend to the Council to take note of the surcharge on the understanding "that all the conditions and criteria embodied in the appropriate provisions of the General Agreement concerning the use of quantitative restrictions for balance-of-payments reasons should be deemed applicable in respect of this import charge".³ A similar approach was adopted in three other cases (1971 Israel; 1974 Israel; 1974 Yugoslavia).⁴ The Committee's decisions assimilating surcharges to the procedures and criteria for import restrictions were adopted unanimously. In the 1971 Israel consultation, however, the representative of Japan asked to have his view recorded in the conclusions that the case should not be regarded as a precedent.⁵

41. The Committee's approval towards import surcharges during the past five years contrasts with a more formal approach of the CONTRACTING PARTIES in the early 1960's when waivers for surcharges, at least when imposed by developing countries, were frequently granted. In two cases, the Committee recommended the extension of waivers originally granted in 1961 (Uruguay)⁶ and 1963 (Turkey).⁷ These decisions were consequences of the more formal approach of the past.

42. The procedural assimilation of surcharges to import restrictions by the Committee does not, of course, change the rights of contracting parties affected by surcharges. The Committee, in some of its conclusions on surcharges

¹BOP/R/59, page 10

²BOP/R/68, page 3

³BOP/R/48, page 10

⁴BOP/R/54, page 8; BOP/R/78, page 6; BOP/R/74, page 7

⁵BOP/R/54, page 8

⁶L/3409, Annex I

⁷BOP/R/65, page 11

reaffirmed the rights of affected countries by stating that the decision to take note by the Council would in no way preclude recourse to the appropriate provisions of the General Agreement by any contracting party which considered that any benefits accruing to it under Article II of the Agreement in respect of any bound item were nullified or impaired as a consequence of the surcharge.

43. As to import deposits, it is not clear which decision has to be taken because the CONTRACTING PARTIES have not decided whether a deposit requirement in respect of bound items is a "charge ... imposed on or in connexion with importation" or, more generally, a "treatment ... less favourable than that provided for in the appropriate ... Schedule", and therefore contrary to Article II.

44. Possibly as a result of this, the conclusions on import deposits have generally been vague and have avoided any connotation of approval or disapproval. A typical example is the 1974 consultation with Greece in which the Committee merely "noted the intention of Greece to continue reducing the rates of the prior import deposit scheme."¹ There was no case where an import deposit scheme was found to be violating the General Agreement's financial or commercial criteria for import restrictions. In some cases the deposit schemes applied by the consulting country were not mentioned in the conclusions.

45. The CONTRACTING PARTIES have no authority over exchange restrictions. However, if they find that exchange restrictions on payments and transfers in connexion with imports are being applied by a contracting party in a manner inconsistent with the exceptions for quantitative restrictions provided for in the General Agreement, they may decide to report thereon to the Fund (Article XV:5)

46. Conclusions concerning exchange measures have been rare when viewed against the fact that most consulting countries were, at the time of the consultations, using exchange measures to control their foreign trade. Only in one case (1970 Egypt)², the Committee recommended a timely reform of the exchange system, and in another (1971 Ghana)³ it urged the consulting country to consider liberalizing controls on profit and dividend repatriation. The Committee never decided to report on exchange measures to the Fund.

47. As to import procedures which are restrictive because of their complexity Article VIII:1(c) states that the CONTRACTING PARTIES "recognize the need for minimizing the incidence and complexity of import and export formalities". If

¹BOP/R/75, page 8

²BOP/R/49, page 10

³BOP/R/53, page 8

the CONTRACTING PARTIES find that this goal has not been reached in a particular case, they may, according to Article VIII:2, decide to request the contracting party concerned to review the operation of its laws and regulations with a view to reducing the incidence and complexity of foreign trade procedures.

48. Without specifically referring to Article VIII:2 the Committee, in its conclusions in a large number of cases, urged the consulting country to reduce the complexity of its import procedures. In one case (1973, India)¹ the Committee suggested the adoption of a uniform nomenclature for import control and tariff purposes.

49. Some of the conclusions urge the consulting country to undertake export promotion and diversification efforts. Other recommendations on alternative adjustment measures, such as monetary and fiscal policies, devaluations or capital controls, have not been included in the Committee's conclusions. A recommendation on monetary and fiscal policies might have met the objection that Articles XII:3(d) and XVIII:11 expressly provide that contracting parties shall not be required to withdraw or modify restrictions on the grounds that a change in domestic policies directed towards full employment or development would make the restrictions unnecessary. Recommendations on other alternatives to trade measures would have been difficult to make partly because of the need to treat such matters confidentially.

50. Some of the conclusions indicate the reasons that have led the Committee to adopt its decision, others merely "note" or "welcome" certain aspects of the case and suggest thereby that these aspects were the major determining factors for the Committee's finding, and many provide no reason at all. The following cases may serve as examples.

51. In the 1970 Yugoslav surcharge case, the Committee recommended to the Council to take note of the surcharge for reasons that were explicitly stated: "... having regard to the limited incidence of the charge at the specified rate of 5 per cent ..." etc.² In the conclusions of the October 1974 consultations with Israel, the Committee "noted" the temporary nature of the surcharge and "welcomed" the fact that Israel had adopted a programme of strong fiscal and monetary measures designed to permit the gradual removal of the surcharge.³ In the conclusions of the 1970 consultations with Indonesia, the Committee neither stated nor suggested any reasons but "wished the Indonesian Government continued success in its effort to develop a more liberal system of trade and payments".⁴

¹BOP/R/70, page 17

²BOP/R/48, page 10

³BOP/R/78, page 6

⁴BOP/R/51, page 10

52. Conclusions without reasons tend not to prejudge future cases. Conclusions with reasons, however, give the Committee's decisions more general applicability; they can elevate the case to a precedent and thus may serve as a guide in future cases. Where reasons were not indicated in the conclusions, this may have resulted partly from the fear that criteria too firmly established would introduce an undesirable element of rigidity in the approach to a complex and changing problem facing many contracting parties and, moreover, could be taken by contracting parties as a carte blanche for imposing measures within the limits specified by the Committee. Where the reasons were explicitly stated, this may have been prompted by the realization that the decisions of the Committee have to be of a more general applicability if they are to have an effect on future decisions of governments facing payments difficulties and if the repeated reopening of a debate within the Committee on the same issue is to be avoided. Where the reasons were only vaguely suggested by "noting" or "welcoming" certain aspects of the case, this may reflect the search for a compromise between these opposing considerations.

53. A survey of all conclusions of the Committee during the past five years shows that the Committee has generally been very hesitant about stating the reasons for its conclusions. This seems to indicate that it has perceived as its primary task the establishment of a consensus on the particular restrictive measures discussed rather than the development, by way of precedents, of general criteria that could guide governments planning financially motivated trade controls.

VI. REPRESENTATION IN THE COMMITTEE

54. The Balance-of-Payments Committee is a relatively small body, whose membership has been between eighteen and twenty-one contracting parties over the past five years. New members over this period have been Denmark and Ireland as member States of the European Communities and Hungary. Otherwise, the membership has been stable, comprising:

| | | |
|-----------------------|---------|---------------|
| Australia | Finland | Japan |
| Brazil | Ghana | Sweden |
| Canada | Hungary | United States |
| EEC and member States | India | Uruguay |

55. With rare exceptions, meetings are attended by members of the permanent missions in Geneva, rather than by representatives sent from capitals. Consulting countries, on the other hand, often supplement their delegations with representatives from Ministries of Finance, Foreign Affairs, Commerce or Economy, and sometimes from central banks. Consulting delegations usually comprise three

to six persons. The number of observers to meetings varies with the country being consulted. The United Nations always sends an observer, whereas contracting party observers have varied from two to seven, according to interests involved.

ANNEX 1

| | 1970 | 1971 | 1972 | 1973 | 1974 |
|--|---|---------------------------------------|---|---|--|
| XII/XVIII:B Invoked | - | South Africa | Argentina | Bangladesh | - |
| XII/XVIII:B Disinvoked or no longer applicable | Uruguay | Brazil | South Africa | New Zealand Spain | Iceland |
| Examinations for waivers | Uruguay | Uruguay | Uruguay Turkey | Turkey | Uruguay |
| Article XII Consultations | Finland Iceland | Iceland New Zealand | Finland Iceland New Zealand South Africa 2 x | Finland Iceland | - |
| Article XII/ XVIII:B Consultation | Israel Spain | Israel | - | Spain | Israel 2 x |
| Article XVIII:B Consultation | Egypt Greece Indonesia Peru Uruguay Yugoslavia | Brazil Ghana Korea Sri Lanka | Argentina | India Turkey | Greece Yugoslavia |
| Other consultations (M) | | | | (M) Egypt Greece India Indonesia Korea Pakistan Sri Lanka Yugoslavia | (M) Bangla- desh Chile Ghana Peru Tunisia |

ANNEX 2

Basic Document For A Consultation
Under Article XII:4(b) Or Article XVIII:12(b)

Points to be Covered

1. Legal and administrative basis of the import restriction
2. Methods used in restricting imports
3. Treatment of imports from different sources including information on the use of bilateral agreements
4. Commodities, or groups of commodities, affected by the various forms of import restrictions
5. State trading, or government monopoly, used as a measure to restrict imports for balance-of-payments reasons
6. Measures taken since the last consultation in relaxing or otherwise modifying import restrictions
7. Effects of the import restriction on trade
8. General policy in the use of restrictions for balance-of-payments reasons

ANNEX 3

Plan of Discussion for Consultations
under Articles XII:4(b) and XVIII:12(b)

I. Balance-of-payments position and prospects

Balance-of-payments situation and level of monetary reserves.
Balance-of-payments prospects and expected movement in reserves.
Special considerations affecting the availability of or the need for monetary reserves.
Factors, either external or internal, affecting the various elements of the balance of payments, such as exports and imports.
Effects of the restrictions on the balance of payments and expected duration of the restrictions.
Prospects of relaxation or elimination and likely effect of such action on the balance of payments.

II. Alternative measures to restore equilibrium

Internal monetary and fiscal situation and other relevant matters which may affect the balance of payments.
Internal action to preserve or restore equilibrium including long-term measures such as those designed to raise productivity and export capacity or to reduce structural disequilibrium or rigidities.
Other measures which may help to restore the country's balance of payments.

III. System and methods of the restrictions

Legal and administrative basis of the restrictions.
Methods used in restricting imports, including the categories of goods and proportion of imports covered by each method.
Treatment of imports from different countries or currency areas.
The use of State trading or governmental monopoly in imports and the restrictive operation, if any, of such régimes.

IV. Effects of the restrictions

Protective effects of the restrictions on domestic production.
hardship that may be expected upon relaxation or elimination of the restrictions.
Steps taken to reduce incidental protective effects of the restrictions.
Steps taken to minimize the difficulties of transition to the stage where balance-of-payments restrictions may be eliminated.
Steps taken in the light of Article XII:3(c) and the proviso to Article XVIII:10.

ANNEX 4

Import Surcharges

Contracting Parties Applying Import Surcharges¹
and Balance-of-Payments Committee examination - 1970-1974

| <u>Country</u> | <u>Dates of Measure</u> | <u>BOP Committee</u> | <u>Comments</u> |
|-----------------------|-------------------------|---|--|
| Argentina | Nov.1971- Feb.1972 | Terminated before consultation in June 1972 BOP/R/62 | Notified to GATT. No waiver |
| Brazil | Jan.1968- | Termination announced for Dec.1971 during June 1971 consultation BOP/R/57 | No notification since 1971 |
| Denmark | Oct.1971- Apr.1973 | - | GATT Council and Working Party. No waiver |
| Dominican Republic | 1964- | - | Never notified |
| Egypt | Apr.1956 | Discussed in 1970 consultation paragraph 21 BOP/R/49 | |
| Ghana | Mar.1965 | Discussed in 1971 consultation BOP/R/53, paragraph 29 | No schedule |
| Guyana | Jan.1969 | - | No schedule |
| Haiti | 1967- | - | No notification |
| Iceland | 1972- | Discussed in 1972 and 1973 consultations BOP/R/64 & 71 | - |
| India | Dec.1971 | Not discussed in 1973 consultation | Waiver Auxiliary duties expire 31 March 1975. Schedule |
| Indonesia | 1955- | Discussed in 1970 consultation BOP/R/51 | Waiver for renegotiation of Schedule XXI pursuant to tariff reform |

¹Source: IMF Annual Report on Exchange Restrictions 1971-1974.

| <u>Country</u> | <u>Dates of Measure</u> | <u>BOP Committee</u> | <u>Comments</u> |
|----------------|--------------------------|---|--|
| Israel | Aug. 1970- | Discussed in 1971 consultation, BOP/R/54, and 1971 consultations BOP/R/73 and 78 | Legislation until March |
| Korea | 1964- | Discussed in 1971 consultations, BOP/R/56, paragraph 19 | - |
| Malawi | Dec. 1968- | - | No notification |
| Malaysia | Jan. 1967- | - | Disinvoked XVIII:3 in 1960. No further notification |
| Nicaragua | June 1968- | - | No notification |
| Nigeria | Oct. 1967- | - | No notification |
| Pakistan | Nov. 1965- | Discussed in 1969 consultation, BOP/R/39, paragraph 21. Stated surcharge discontinued | - |
| | Sept. 1973- June 1974 | - | Waiver |
| Peru | May 1968 | - | - |
| Turkey | Feb. 1963 | Discussed in BOPs Committee 1972, 1973, L/3787, BOP/R/65 | Waiver for stamp duty |
| United States | Aug. 1971- Dec. 1971 | - | Notified. Council discussion. Working Party. No waiver |
| Uruguay | 1955- | Discussed in BOPs Committee 1970, 1971, 1972, 1974 | Waiver |

| <u>Country</u> | <u>Dates of Measure</u> | <u>BOP Committee</u> | <u>Comments</u> |
|----------------|-------------------------|---|-----------------|
| Yugoslavia | 1969- | Discussed in 1970 consultation (BOP/R/48), 1974, (BOP/R/74) - assimilated to BOP measures | - |
| Zaire | 1972- | - | Not notified |

ANNEX 5

Import Deposits

Contracting Parties Applying Import Deposits¹ and
Balance-of-Payments Committee Examination - 1970-1974

| <u>Country</u> | <u>Dates</u> | <u>Balance-of-Payments Committee</u> | <u>Comments</u> |
|-------------------|--------------|---|---|
| Argentina | 1971- | Discussed in 1972 consultation BOP/R/62 | - |
| Burundi | 1965- | - | - |
| Chile | 1962- | - | - |
| Greece | 1955- | Discussed in 1970 consultation BOP/R/50, 1974 consultation BOP/R/75 | - |
| Haiti | 1969- | - | - |
| Iceland | 1974- | - | Council; Working Party, but measure phased-out before meeting of Working Party |
| Indonesia | 1968-1971 | - | - |
| Israel | 1970- | Discussed in 1970 consultation BOP/R/73, 1971 BOP/R/54, 1974 BOP/R/73 and 78 | - |
| Italy | 1974- | - | Council; Working Party |
| Korea | 1963- | Discussed in 1971 consultation BOP/R/56 | - |
| Rwanda | 1972- | - | - |
| Spain | 1969-1971 | Discussed in 1970 consultation BOP/R/47 | - |
| Turkey | 1955- | Discussed in 1973 consultation BOP/R/65 | - |
| United Kingdom | 1968-1970 | - | Council; Working Party |

¹Source: IMF Exchange Restrictions 1971-74

| <u>Country</u> | <u>Dates</u> | <u>Balance-of-Payments Committee</u> | <u>Comments</u> |
|----------------|--------------|---|---|
| Uruguay | 1956 | Discussed in 1970 examination BOP/R/45, 1972, L/3722 | - |
| Yugoslavia | 1969-1971 | Not discussed in 1970 consultation | - |
| | 1974- | Not discussed, measure will expire before next consultation | Notified to GATT - Council took note |