

CONTRACTING PARTIES

THIRD SESSION

REPORT OF WORKING PARTY 3

ON CONSULTATION PROCEDURE UNDER ARTICLE XII, 4(a)

I. Introduction

1. This report is submitted by the Working Party in accordance with paragraph 2 of its terms of reference, which requires the Working Party "to make practical recommendations to the CONTRACTING PARTIES for the efficient working of the procedure for consultations provided for in Article XII, 4(a)".

2. Having in mind the present arrangements for administering the provisions of the General Agreement, the Working Party considered that its attention should be focussed on the task of designing a simple and flexible procedure which could be expected to serve the probable needs of the CONTRACTING PARTIES during the immediate future. Since at the present juncture, it is not considered advisable to formulate a permanent procedure, the Working Party recommends the adoption of interim arrangements which should be reviewed at a subsequent session of the CONTRACTING PARTIES.

II. Meaning and scope of consultation

3. In order to achieve the purpose of consultation, the Working Party feels that there should be a free and frank exchange of views between the CONTRACTING PARTIES and a contracting party which either :

- a) is considering the institution of import restrictions (prior consultation) or
- b) has just imposed such restrictions (post consultation).

As set forth in paragraph 4(a) of Article XII, this exchange of views -or consultation- would cover the nature of the balance-of-payments difficulties, the alternative corrective measures which may be available, and the possible effect of such measures on the economics of other contracting parties. In the case of a prior consultation, paragraph 4(a) does not require a contracting party "to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt". In the case of post consultation, the same qualifications would apply to any alternative measures or modifications of existing measures which a contracting party may determine to adopt following the consultation.

Although recognizing that circumstances will undoubtedly vary, the Working Party concluded that in general a mutually satisfactory exchange of views would only occur when, in the case of prior consultation, the discussion began sufficiently in advance of the institution of the measures, and when, in the case of both prior and post consultations, an adequate disclosure of information was made to the CONTRACTING PARTIES.

III. The process of consultation.

1. The Working Party envisaged the first stages in consultation to be :
 - a) a request by a contracting party to the Chairman of the CONTRACTING PARTIES for either prior or post consultation;
 - b) reference by the Chairman of this request to the CONTRACTING PARTIES.

This procedure should not present special difficulty when the CONTRACTING PARTIES are in session but the Working Party recognized that at other times the process of consultation would be difficult. The creation of elaborate consultative machinery has appeared to be unwarranted at the present time. It has been recognized, however, that the CONTRACTING PARTIES have an obligation to establish some procedure for consultation during the inter-session period. It is therefore desirable that the CONTRACTING PARTIES should make the necessary administrative arrangements to establish such procedure.

Secrecy and procedure for prior consultation

5. Paragraph 4 (e) of Article XII lays on the CONTRACTING PARTIES an obligation to make provision for the utmost secrecy in any consultation under the Article. The Working Party, in the course of the consultation with the representative of South Africa has been impressed with the wisdom of this requirement and records its opinion that, in default of suitable provisions for secrecy, prior consultation with a country which was faced with a crisis would become virtually impossible.

6. The Working Party considered that this need to observe the utmost secrecy makes it desirable that the CONTRACTING PARTIES authorize their Chairman, whenever he receives a request for prior consultation under Article XII 4 (a) during a session of the CONTRACTING PARTIES, to call a secret meeting of the CONTRACTING PARTIES to discuss ways and means of facilitating the conduct of such prior consultation, and to take the necessary steps to preserve secrecy in the course of consultation.

7. The Working Party also reached the conclusion that the only satisfactory means of meeting the problem of a request for consultation received by the Chairman between sessions under Article XII 4(a) was to authorize him to inaugurate and, if necessary, to modify the terms of the consultation and to take the necessary steps to facilitate the conduct of such consultation.

To that effect, the Chairman should, as soon as practicable :

- a) simultaneously notify all other contracting parties through a representative designated by each of them of the fact that he has received such a request (in case of prior consultation, he should also request that the utmost secrecy be observed),
and
- b) determine in the light of information available to him that the consultation is :
 - (i) to take place at the next ordinary session of the CONTRACTING PARTIES, or
 - (ii) to take place at a special session of the CONTRACTING PARTIES which the Chairman would be authorized to convene as quickly as practicable, or
 - (iii) to be first entrusted to an ad hoc Committee, and.
- c) transmit to the International Monetary Fund notice of the request for consultation for consideration in accordance with the arrangements agreed upon by the Chairman of the CONTRACTING PARTIES and the Managing Director of the International Monetary Fund.

8. The general view of the Working Party was that, in order to implement the recommendation set out in paragraph 7 (b) (iii) above, the CONTRACTING PARTIES should authorize their Chairman to nominate and assemble an ad hoc committee or committees (which should be a representative sample of the CONTRACTING PARTIES) in order to facilitate the conduct of consultation under paragraph 4 (a) of Article XII. Some members of the Working Party, however, favoured another method for the selection of the ad hoc Committee. In their view, the CONTRACTING PARTIES :

- a) should nominate at the present session an ad hoc committee of not more than 10, or not less than 6, contracting parties, which should be representative of the CONTRACTING PARTIES in the sense of Article 78 of the Havana Charter. This Committee could be convened by the Chairman to facilitate the conduct of any consultation under paragraph 4 (a) of Article XII requested by a contracting party. Contracting Parties accepting membership in the ad hoc Committee would be expected to facilitate the work of consultation by providing, on short notice, appropriate representatives, and
- b) should authorize the Chairman, generally on the advice of this ad hoc committee, exceptionally to invite any contracting party which is not directly represented on the committee but appears likely to be particularly seriously affected by the proposals to join the committee. Any contracting party which considers itself likely to be seriously affected and which is not member of the committee would, on its representation, be given an opportunity to participate in the consultation as an Observer.

9. If the Chairman decides to refer the matter to an ad hoc Committee, he should notify the contracting parties invited to send representatives when and where the representatives will be required to meet.

Procedure for post consultation

10. In the opinion of the Working Party, the same procedure should apply in the case of post consultation, but it is probable that in most cases the question would be placed on the agenda for the next session of the CONTRACTING PARTIES.

Functions of the ad hoc Committee

11. The Working Party recommends that an ad hoc committee be authorized to act in matters of consultation, under Article XII 4(a) until the next session of the CONTRACTING PARTIES, when its authority may be renewed.
12. The Working Party desires to draw the attention of the CONTRACTING PARTIES to the fact that acceptance of the recommendations set out in the previous paragraphs involves:
- a) a necessary extension of the powers of the Chairman of the CONTRACTING PARTIES, and
 - b) since any consultation initiated under paragraph 4(a) of Article XII is with the CONTRACTING PARTIES jointly, a willingness by the CONTRACTING PARTIES to authorize a representative sample of their number to engage in any consultations on their behalf referred to them by the Chairman of the CONTRACTING PARTIES.
13. The powers thus extended to the Chairman of the ad hoc Committee would, however, not include the right to conclude consultation on behalf of the CONTRACTING PARTIES, which would normally do this at their next session.

Consultation under other provisions

14. The terms of reference of the Working Party were limited to consultations under paragraph 4(a) of Article XII. These consultations would usually involve consideration of import restrictions imposed or to be imposed for balance-of-payments reasons and would normally be undertaken by representatives familiar with such problems. Consultations involving similar problems might however arise under other provisions of Article XII or might refer to provisions of Article XIV and the Working Party suggests that it would be convenient to make use of the procedure outlined in this report for such consultation where the need for this is urgent. Similarly it might be convenient to take advantage of that procedure in related consultations between the CONTRACTING PARTIES and the International Monetary Fund under the relevant provisions of Article XV.

Relations with the International Monetary Fund (1)

15. Consultations under paragraph 4(a) of Article XII involve very close cooperation with the International Monetary Fund, in view of the provisions of Article XV of the General Agreement. On monetary matters, the CONTRACTING PARTIES are required to rely upon the Fund's findings on statistical and other facts, and indeed, on the Fund's judgment as to certain of the basic determination involved in the resort to import restrictions. It is therefore recommended that the Fund be brought into consideration of the matter at the earliest possible moment, particularly in view of its resources of information and personnel for assisting the CONTRACTING PARTIES in such consultations.

16. A contracting party which is a member of the Fund would normally consult with the Fund on matters affecting that contracting party. In view of the important functions of the Fund, under the General Agreement, a contracting party which is not a member of the Fund may also desire to consult directly with the Fund. It is therefore recommended that agreement should be sought with the Fund to the effect that it will accept requests from the Chairman of the CONTRACTING PARTIES to facilitate such direct consultation.

17. The Working Party's study of the South African case indicated the likelihood that a contracting party considering resort to import restrictions might want to use exchange restrictions at the same time, either as an additional administrative safeguard or as an alternative. Exchange measures of Fund members fall within the jurisdiction of the Fund. But frequently the nature and form of exchange restrictions raise important questions of trade policy on which the CONTRACTING PARTIES could be of assistance to the Fund, and the Fund may wish to consult the CONTRACTING PARTIES on these matters. This possibility has been contemplated in the letter addressed by the Chairman of the CONTRACTING PARTIES to the Managing Director of the International Monetary Fund on 9 September 1948 (GATT/CP.2/44) which contains the following paragraph :

"The Fund may from time to time wish to request consultation with the CONTRACTING PARTIES on matters of common interest, and, in such cases, the CONTRACTING PARTIES will be prepared to consult upon such request".

The Managing Director of the International Monetary Fund has expressed agreement with this arrangement in his reply of 28 September 1948 (GATT/CP.2/44 Add.1)

IV. Reports to the CONTRACTING PARTIES and communications to the general public

18. As the consultations under paragraph 4 (a) of Article XII have to take place with the CONTRACTING PARTIES, the Working Party feels that it would be desirable that a full report should be submitted to the CONTRACTING PARTIES on all the facts and statements examined by the ad hoc committee or any working party appointed to facilitate the conclusion of any consultation. The report should be treated as a secret document. It is suggested, however, that the need for absolute secrecy may only be temporary. Without prejudice to the right of the CONTRACTING PARTIES to organise the distribution of their documents, it is recommended that the Chairman may authorize the distribution of the report or parts of the report as a restricted document, provided that the contracting party which requested the consultation has no objection to such a distribution. The facts and statements communicated by the International Monetary Fund will be kept secret as far and as long as the Fund so desires.

19. Taking into account the fact that import restrictions are a matter of general interest and that they must in any case be published under Article X of the General Agreement, the Working Party is of opinion that it may be advisable to inform the public at a suitable time that a prior consultation has taken place and to give some general indication of the results of such consultation. To that effect, the Working Party suggests that it might be advisable to contemplate when appropriate the issue of special unrestricted reports or press releases along these lines. These reports should not reveal any information supplied in confidence by any contracting party and would be released by the Chairman after consultation with the contracting party requesting consultation. The Working Party understands moreover that the Chairman of the CONTRACTING PARTIES and the International Monetary Fund intend to develop a common policy regarding the issue of public announcements relating to matters involved in consultation with the Fund; it is assumed that the rules adopted by them would also apply to the special reports or press releases referred to above.

