

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
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Review Working Party I on
Quantitative Restrictions

REPORT OF SUB-GROUP A TO REVIEW WORKING PARTY I

1. In accordance with its terms of reference the Sub-Group considered the Executive Secretary's draft Article XVIII (W.9/17) with the exception of Section A which was referred to Working Party II. It examined the various proposals which were submitted for amending the draft article in so far as they related exclusively to restrictions imposed for balance-of-payments or development purposes. Although complete agreement had not yet been reached on all points, the Sub-Group thought that sufficient progress had been made to refer back to the Working Party for further consideration a revision of the text which resulted from the deliberations of the Sub-Group. The revised version is given in Annex A.
2. The Sub-Group considered a proposal by the New Zealand delegation relating to Section B, dealing with balance-of-payments restrictions imposed by under-developed countries. This proposal would be to the effect that Section B should not be a self-contained set of provisions, since, unless Articles XII to XIV contained certain provisions such as a time limit and prior approval which would be unacceptable to under-developed countries, they should apply to all contracting parties as they had done up to the present. The content of Section B should in this case be a full recognition of the special factors to be taken into account in relation to the balance-of-payments problems of under-developed countries and a statement of the additional facilities to be granted in applying Articles XII to XIV to them. The general feeling of the Sub-Group was that since the representatives of under-developed countries wanted a separate text, the New Zealand approach should not be followed. The New Zealand representative considered that the matter should be re-examined when a revised text of Articles XII to XIV was available, and reserved his position in the meantime regarding the inclusion of separate balance-of-payments provisions in Section B of Article XVIII.
3. In the interest of shortening the text of the Article, the Sub-Group proposes that certain understandings and provisions relating to special points be inserted in Annex I to the Agreement, which, as suggested, should contain interpretative notes and other regulations. This would not change the legal effect of these provisions since Article XXXIV provides that the Annexes form an integral part of the Agreement. The Sub-Group was also of the opinion that the agreements reached on certain points of interpretation should be included in the permanent records of the CONTRACTING PARTIES to facilitate the application of the Agreement. It appeared unnecessary to burden the text of the Agreement or of the Annex with the inclusion of these points and consequently the Sub-Group

proposes that they be included in the report of the Working Party which will accompany the new text of the Article when it is submitted to the CONTRACTING PARTIES for approval. The text of these notes is given in Annex B to the present report.

4. Finally the Sub-Group wishes to call attention of the Working Party to the following points which were made in the course of its deliberations.

5. The expression "in order to raise the general standard of living" used in earlier drafts has been changed in present paragraphs 3, 6, and 13 to "with a view to raising the general standard of living". The Sub-Group was of the opinion that this more flexible expression would cover the 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.

6. The clause in sub-paragraph 4(b) of the Article 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 needs that Section is intended to meet.

7. As indicated in paragraph 1 above, the Sub-Group has not considered Section A. It has, however, suggested a new wording for the opening part of paragraph 6 to make the text consistent with the other sections of the draft Article as well as to meet the point mentioned in paragraph 5 above.

8. The provision for consultation in paragraph 11 was considered satisfactory by those members of the Sub-Group which represented under-developed countries, but was not agreed to by certain other members. Among the latter, one proposed that the text should provide that restrictions maintained under Section B should be made the subject of annual consultation, while others felt that the consultation requirements depended on what would be provided in Article XII. It was agreed that the text of paragraph 11 should be reconsidered when the draft of that Article became available.

9. Several suggestions were made to incorporate in Section B a provision to the effect that bilateral agreements were allowed under that Section. The Sub-Group came to the conclusion that such an insertion was unnecessary since the proviso in the proposed draft of paragraph 12 was based on the same criteria as the present text of sub-paragraph 1(b) of Article XIV, under which bilateral agreements are allowed in so far as the measures permitting resort to such agreements are applied consistently with the Articles of Agreement of the International Monetary Fund. On the other hand, some representatives suggested that the Agreement should contain a provision enabling contracting parties which do not operate under Article XVIII to enter into bilateral agreements with other contracting parties resorting to Section B of Article XVIII. The consensus of opinion in the Sub-Group was, however, that this problem exceeds the terms of reference of the Sub-Group; if necessary it can be taken up by the Working Party.

10. The Sub-Group included tentatively the clause in square brackets in paragraph 12 which corresponded to the present text of paragraph 2 of Article XIV. The Sub-Group is, however, of the opinion that this clause should be re-examined if Article XIV is modified on this point.

11. Certain members of the Sub-Group reserved their positions on paragraph 18 and the last sentence of paragraph 22 on the ground that these provisions relating to bound items should be re-examined when the revised drafts of other relevant provisions of the Agreement were available.

ANNEX A

TEXT OF THE PROPOSED DRAFT OF ARTICLE XVIII

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, and in particular of those economies which can only support low standards of living and are in the early stages of development.
2. They recognize further that it may be necessary for those contracting parties, in order to implement programmes of economic development designed to raise the general standard of living of their population, 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. They 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 population. Special procedures are laid down in Sections C and D of this Article to deal with those cases.
4. (a) Consequently, a contracting party whose economy 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 whose economy is in the process of development but which does not come within the definition of sub-paragraph (a) above, may make applications to the Organization under Section D of this Article.
5. The Organization shall review annually all measures applied pursuant to the provisions of Sections C and D of this Article.

Section A

6. If a contracting party coming within the definition set out in subparagraph (a) of paragraph 4 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 population, to modify a rate of duty which has been bound under Article II of this Agreement, it shall enter into negotiation with any other contracting party with which such rate of duty was initially negotiated, and with any other contracting parties which the Organization determines to have a substantial interest in the proposed action. If agreement is reached between the contracting parties concerned, the Schedule of the contracting party which proposes to change the rate shall be considered as modified to give effect to such agreement, including any compensatory concessions involved. If agreement is not reached within a period of sixty days after notification of the proposed action has been received by the Organization, it shall promptly consider the matter and, if it finds that the contracting party which proposes to modify the rate has made every effort to reach an agreement and that the compensatory adjustment offered is adequate, that contracting party shall be free to modify the rate at the same time as it introduces the compensatory adjustment.⁷¹

Section B

7. 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 definition set out in subparagraph (a) of paragraph 4 of this Article may, subject to the provisions of paragraphs 8 to 12 below, 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

- (i) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or
- (ii) 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 contracting party's reserves, or 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.

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See paragraph 7 of the Report.

8. In applying these restrictions, the contracting party concerned 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.

9. 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 7 above and shall eliminate them when conditions no longer justify such maintenance, provided that no contracting party shall be required to withdraw or modify restriction on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.

10. Any contracting party introducing or maintaining restrictions under this Section shall, before introducing such restrictions or making changes in the application of such restrictions (or, in circumstances in which prior notification is impracticable, immediately after doing so), notify the Organization in writing of the nature of the action required.

11. The contracting party concerned shall consult with the Organization, if and when requested to do so, and give sympathetic consideration to the recommendations which may be made by the Organization in the course of such consultations. This provision does not affect in any way the obligations of the contracting party concerned under the provisions of paragraphs 7 to 9 above.¹

12. The restrictions introduced or maintained in accordance with this Section shall be applied in a non-discriminatory manner in accordance with the provisions of Article XIII of the Agreement, provided that a contracting party applying such restrictions may deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time maintain consistently with the Articles of Agreement of the International Monetary Fund or with a special exchange agreement entered into pursuant to paragraph 6 of Article XV of this Agreement or, with the consent of the Organization, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.² Any discriminatory application of restrictions pursuant to this paragraph shall be a subject for consultation under paragraph 11 above.

¹ See paragraph 8 of the Report

² See paragraph 10 of the Report.

Section C

13. If a contracting party coming within the definition set out in subparagraph (a) of paragraph 4 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 population, 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 Organization of the special difficulties which it meets in the achievement of the objective outlined in paragraph 13 above, and 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 expiry of the time-limit laid down in paragraph 15 or paragraph 17 below, as the case may be, or, if the measure affects imports of a product the rate of duty on which is bound under Article II of this Agreement, unless it has secured the concurrence of the Organization in accordance with the provisions of paragraph 18 below, provided that, if the industry receiving assistance has already started production, the contracting party concerned may, after informing the Organization, take such measure 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 Organization does not request the contracting party concerned to consult with it, 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 Organization to do so, the contracting party concerned shall consult with it 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 Organization agrees 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 above, and concurs 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 from the date of notification under paragraph 14 above, the Organization has not concurred in the proposed measure, the contracting party concerned may introduce the measure proposed after informing the Organization.

18. If the proposed measure affects imports of a product the rate of duty on which is bound under Article II of this Agreement, the contracting party concerned shall enter into consultation with any other contracting party with which the rate of duty was initially negotiated, and with any other contracting parties which the Organization determines to have a substantial interest in the product. The Organization shall concur in the measure if it agrees 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 above and is satisfied:

- (a) that agreement has been reached with the contracting parties interested in the product in question as a result of the consultation referred to above, or
- (b) if no such agreement has been reached within a period of sixty days after the notification referred to in paragraph 14 has been received by the Organization, that the contracting party concerned has made all reasonable effort to reach an agreement and that the interests of other contracting parties are adequately safeguarded.

The contracting party concerned shall thereupon be released from its obligations under the relevant provisions of the other Articles of the Agreement to the extent necessary to apply that measure.

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

20. Nothing in the foregoing paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. Further, the restrictions shall be 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; nor shall the restrictions be so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.

21. At any time when a measure is being applied under paragraph 17 any other contracting party substantially affected by it may suspend the application to the trade of the contracting party concerned of such substantially equivalent

obligations or concessions under this Agreement the suspension of which the Organization does not disapprove, provided that sixty-days' notice of such suspension is given to the Organization not later than six months after the measure was introduced or changed substantially to the detriment of that contracting party. Any contracting party acting under this paragraph 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 (b) of paragraph 4 of this Article desiring, in the interest of the development of its economy, to take a specific measure of the type described in Section C of this Article in respect of the establishment of a particular industry may apply to the Organization for approval of such measure. The Organization shall promptly consult with the contracting party and shall, in making its decision, be guided by the considerations set out in paragraph 16 of this Article. If the Organization concurs 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. If the proposed measure affects imports of a product the rate of duty on which is bound under Article II, the provisions of paragraph 18 above shall apply.

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

TEXT TO BE INSERTED IN THE ANNEX TO THE AGREEMENT CONTAINING INTERPRETATIVE NOTES AND OTHER REGULATIONS

Ad Article XVIII

Paragraphs 1 and 4

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 whose economies are undergoing a process of industrialization to correct an excessive dependence on primary production.

Paragraphs 3, 6 and 13

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. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

Paragraph 9

The second sentence in paragraph 9 shall not be interpreted to mean that a contracting party is required to relax or remove such restrictions if that relaxation or removal would thereupon produce conditions justifying the intensification or institution, respectively, of restrictions under paragraph 7 of Article XVIII.

Paragraphs 11 and 15-16

It is understood that the Organization shall invite a contracting party introducing or maintaining restrictions under Section B, or proposing to apply a measure under Section C, to consult with it, pursuant to paragraph 11 or 16 as the case may be, if it is requested to do so by a contracting party likely to be affected by the measure in question.

Paragraph 12

Note 1: The provisions of paragraph 12 permit the introduction or the maintenance by a contracting party of restrictions which are applied against imports from other countries, but not against imports from other territories having a common quota with that contracting party in the International Monetary Fund, on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

Note 2: Notwithstanding the provisions of paragraph 12 of Article XVIII, a contracting party coming within the definition set out in sub-paragraph (a) of paragraph 4 of Article XVIII which has elected to be governed by the provisions of Annex J of the General Agreement may continue to be governed by those provisions for such time as those provisions shall remain in force.

Paragraphs 13 and 14

It is recognized that before deciding on the introduction of a specific measure and notifying the Organization 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 16, 18, 19 and 22

Note 1: It is understood that the Organization 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 Organization has not concurred. In cases in which the Organization has 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, it may apply to the Organization for an extension of that period in accordance with the provisions and procedures of Section C.

Note 2: It is expected that the Organization 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 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 Organization concurs in the measure proposed after the expiry of the ninety-day time limit specified in paragraph 17.

ANNEX B

NOTES FOR INCLUSION IN THE REPORT OF THE WORKING PARTY
ACCOMPANYING THE TEXT OF ARTICLE XVIII

Re: Paragraph 5

The review provided in paragraph 5 of Article XVIII 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 Organization shall not withdraw its 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.

Re: Paragraphs 13 and 22

It is understood that any measure applied under Section C or D shall be for the purpose of contributing to the establishment of an industry which can be expected to make sufficient progress in the course of time to be able to exist without the need for the special measures permitted under those provisions.

Re: Paragraph 14

It should be noted that any measure taken in accordance with the proviso of paragraph 14 should be only for the purpose specified therein and should not be a means of affording protection to the industry in question. The contracting party concerned should, therefore, refrain from irrevocable commitments of a long term nature before the expiry of the specified period so as to avoid difficulties in the event that it should decide, as a result of the consultation with the Organization, to modify or not to proceed with the proposed measure.

Re: 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 Interpretative Note ad paragraph 14, and should not be so construed as to deprive a contracting party 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.

Re: Paragraph 20

It is the intent of the provision in paragraph 20 relating to imports in "minimum commercial quantities" that in applying a measure under Sections C or D of Article XVIII, the contracting party concerned should avoid the complete exclusion of any product. It is recognized, however, that there might be circumstances where this would not be practicable, for instance when the minimum quantity that could be commercially shipped constitutes too high a proportion of the requirements of the domestic market.

Re: Paragraph 21

As a point of interpretation, although it is understood that the concurrence of the Organization in a measure under paragraphs 15, 19 or 22, or the fact that the Organization, as envisaged in paragraph 15, has not requested a contracting party to consult, would not deprive a contracting party affected by the measure in question of its right to lodge a complaint under Article XXIII, the Organization, in assessing the extent of the impairment of benefit, would have to take into consideration all the facts of the case and, in particular, the terms under which the benefit was obtained, including the provisions embodied in Article XVIII. It is therefore recognized that the Organization would not be in a position to allow a contracting party to resort to the withdrawal of concessions or suspension of obligations under paragraph 2 of Article XXIII, unless the effects of the measure concurred in proved to be substantially different from what could reasonably have been foreseen at the time the measure was considered by the Organization.

Re: Interpretative Note ad paragraphs 13 and 14

It is recognized that the "reasonable period of time" referred to in the Interpretative Note ad paragraphs 13 and 14 should normally not exceed two years from the date on which the industry concerned started production.