

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES  
Ninth Session

Review Working Party I on Quantitative  
Restrictions

## DRAFT REPORT OF REVIEW WORKING PARTY I ON QUANTITATIVE RESTRICTIONS

### PART II: GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT

35. After a detailed consideration of the various proposals put forward to deal with the problem of governmental assistance to economic development and to lay down rules under which under-developed countries could, in certain defined circumstances, deviate from the provisions of the General Agreement, the Working Party came to the conclusion that it would be appropriate to re-cast the present Article XVIII and to insert in that Article provisions dealing with all the aspects of this problem, including the maintenance of quantitative restrictions for balance-of-payments reasons. 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 under-developed 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.

36. 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 be 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, of negotiations 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.

37. The first limitation is 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. With the same object in view, the Working Party proposes that the facilities of Article XVIII cease to be available to industrialized countries for purposes of reconstruction.

38. Secondly, the text recommended by the Working Party attempts to define in a more definite fashion the types of measures which, in its opinion, justifies recourse to the facilities provided under the Article. Although the key words in this respect are "establishment of a particular industry" the interpretative note added to the text contains an enumeration of the type of development which is covered by the Article. The Working Party is satisfied in that the interpretative note includes all types of development which the present text was intended to cover, and believes that the new draft has the advantage of removing the ambiguities and differences of interpretation which may result from the present wording.

39. The Working Party believes that the new Article is drafted in such a way that all contracting parties could assess more accurately than is the case at present the rights which they may enjoy under the Article, as well as the risks which resort to those provisions by other contracting parties may involve for their commercial interests. The general view of the Working Party was therefore that this new approach represented a substantial improvement as compared with the present provisions. However, the South African representative made a formal reservation on the Article as a whole and objected more particularly to those provisions of paragraph 17 under which a contracting party could introduce a measure inconsistent with the general obligations under the Agreement without the concurrence of the CONTRACTING PARTIES.

He proposed moreover the deletion of those words "the suspension of which the CONTRACTING PARTIES do not disapprove" in paragraph 21, in order to make it clear that the action taken by a contracting party substantially affected to restore the balance of benefits should not be made dependent on prior approval by the CONTRACTING PARTIES. The Working Party felt that this amendment was unnecessary since the wording is taken from the present text of Article XIX and that it is clear, both from the text itself and from the practice followed so far by the CONTRACTING PARTIES, that the contracting party affected is not obliged to obtain prior approval from the CONTRACTING PARTIES and that the object of the phrase quoted is merely to indicate that the CONTRACTING PARTIES have a right to require adjustments in the action taken if they consider that the action goes beyond what is necessary to restore the balance of benefits.

40. The new text of Article XVIII as reproduced in the Annex to this report contains five parts: a preamble defining the objectives and the scope of the Article; Section A relating to the renegotiation of tariff concessions; Section B relating to balance-of-payments import restrictions; Section C defining the circumstances under which deviations from the provisions of the Agreement may be permitted in so far as they relate to the establishment of an industry with a view to raising the general standard of living of the country concerned. Those three sections apply only to the countries which are in the early stages of economic development and whose economy can only support low standards of living. Finally, Section D provides certain facilities for those contracting parties whose economy is in the process of economic development but which do not meet the criteria laid down in sub-paragraph 4(a) of the Article.

41. 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. It should be noted in this connexion that Working Party IV recommended the insertion of a new paragraph (paragraph 6)<sup>1</sup> to refer specifically to the consultation procedure under Article XXII in cases of sudden falls in the sale of primary commodities. The last paragraph 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.

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<sup>1</sup> See Report of Working Party IV (document L/327, paragraph 42).

42. In connexion with the wording used in paragraph 3, as well as in paragraphs 7 and 13 of the text, the Working Party wishes to record that the phrase "with a view to raising the general standard of living" 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.

43. Section A reproduces the amended text as approved by Review Working Party II.<sup>1</sup>

44. Section B contains the provisions relating to the maintenance of quantitative restrictions on imports for balance-of-payments reasons by countries whose economy can only support low standards of living and which are in the early stages of development. 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, though modelled on paragraphs 1 and 2(a) 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.

45. Paragraphs 10 and 11 reproduce in substance the provisions of sub-paragraph 2(b) and of paragraph 3 of Article XII. These provisions 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. An interpretative note has been added regarding the intent of the second sentence of paragraph 11.

46. Paragraph 12 contains the provisions relating to the consultations procedure. The main difference with the corresponding provisions of paragraph 4 of Article XII relates to the periodicity of the consultations under sub-paragraph (b). Instead of annual consultations, the Working Party recommends that the consultations under Section B of Article XVIII should take place approximately every two years. The proviso in sub-paragraph (b) was introduced in order to prevent that consultations with under-developed countries should take place at too short intervals, in view of the practical

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<sup>1</sup> See document L/329, pages 19-20 and paragraphs 22 and 23.

difficulties which those countries may have in preparing the necessary documentation and in sending experts to attend those consultations. As consultations are provided, not only periodically but also when there is a substantial intensification of the measures applied under Section B of Article XVIII, and also as a result of a challenge by a contracting party affected, it is provided that if a consultation takes place under sub-paragraph 12 (a) in the case of intensification or a consultation of the same general scope under the provisions of 12(d), the next periodic consultation would be postponed so that at least two years elapse between the consultation under 12(a) of 12(d) and the next periodic consultation. The remarks and agreed statements referring to consultation 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. In particular, the date on which the review of restrictions applied under Section B of Article XVIII will be the same as the date applicable to the review of restrictions maintained under Article XII.

47. An interpretative note has been added to paragraph 12(c)(ii) and (d) in order to allow a contracting party to withdraw from the Agreement at shorter notice than is provided in Article XXXI if it finds that the operation of its programme and policy of economic development is adversely affected by measures authorized by the CONTRACTING PARTIES in accordance with the provisions of those sub-paragraphs.

48. It was also agreed to insert an additional provision in sub-paragraph (e) 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.

49. The Working Party did not feel it was necessary to insert in Article XVIII a provision along the lines of sub-paragraph 4(e) of Article XII and of the interpretative note relating to that sub-paragraph. It agreed, however, 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.

50. The Working Party does not suggest to insert any reference to the non-discriminatory nature of restrictions maintained under Section B or to the cases in which deviations from that rule would be permitted. It considered that, the additions proposed in the text of Article XIV (see paragraph 27 above) cover the case adequately, and that, from a legal point of view, any cross-reference in the text of Section B would be redundant. There is, however, one point which the CONTRACTING PARTIES might usefully consider when they approve the amendments to the Agreement. It is proposed that the new text of paragraph 1 of Article XIV will come into force not at the same time as the other amendments to the Agreement, but on a date to be determined by the CONTRACTING PARTIES (or the Organization); it may well be that the new text of paragraph 1 of Article XIV (including the cross-reference to Section B

of Article XVIII) has not entered into force at the time when the provisions of that Section become operative. It did not appear necessary to include a specific provision in the Protocol of amendment to cover that point, provided that the CONTRACTING PARTIES recognize formally that the present provisions of Article XIV would apply to restrictions maintained under Section B of Article XVIII until such time as the new text of paragraph 1 of Article XIV becomes applicable.

51. Sections C and D deal with the application, in the interest of economic development, of measures affecting imports, such as quantitative restrictions, which may be necessary to promote the establishment of particular industries.

52. The Working Party considered a joint proposal for an additional paragraph in Article XVIII which would have had the effect of making Section C of that Article applicable to cases of development or maintenance of existing industries subject to prior concurrence (W.9/210). The Working Party was unable to recommend such an addition. It considered however that certain types of cases which the proposed amendment was intended to cover could be met by a clarification of the text of the interpretative note defining the words "the establishment of particular industries" which would include the cases of substantial expansion of an existing industry supplying a relatively small proportion of the domestic demand. Such expansion need not be completed within the period for which the restrictive measure may be permitted. However, it is not intended to allow the use of such restrictions indefinitely or for a protracted period during which the industry in question is able to expand only very slowly by virtue of continued protection through such restrictions. The Working Party recognized that there may be cases which might not be included in the revised provisions of Article XVIII but was of the opinion that it would be undesirable to widen unduly the scope of Article XVIII in order to cover such individual cases and that the usual procedure for meeting special difficulties, i.e. the request for a waiver under paragraph 5(a) of Article XXV would be a better solution of that problem.

53. As regards the renewal of releases already granted under the present text of Article XVIII and which may be of particular importance to Ceylon, the Working Party agreed that the text of Note 1 and paragraphs 16, 18, 19 and 22 is worded in such a manner that the procedure for renewal of a dispensation under Section C or D of this Article would apply, not only to measures authorized under the amended text of Article XVIII, but also to measures which may have been approved by the CONTRACTING PARTIES under the provisions of the present Article XVIII.

54. Section C is open only to the contracting parties whose economy can only support low standards of living and which are in the early stages of development, i.e. those coming within the definition set out in sub-paragraph 4(a) of the Article, whereas Section D is open to contracting parties whose economy is in the process of development but does not meet the above criteria, i.e. to those coming within the scope of the definition set out in sub-paragraph 4(b) of the Article. The clause in that sub-paragraph 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.

55. The general structure of Section C has been described in paragraphs 51 to 53 above, and it would be sufficient here to record some points which the Working Party wishes to place on record to facilitate the interpretation of the text.

56. Paragraph 13 specifies the cases in which recourse may be had to Section C. In this connexion, 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.

57. Paragraph 14 contains procedural provisions and lays down the principle that no measure can be introduced before thirty days if the CONTRACTING PARTIES do not request the contracting party to consult or before ninety days if consultation takes place. The proviso of this paragraph would permit, however, the introduction of interim measures in defined circumstances, and it should be noted in this connexion that any measure taken in accordance with that proviso 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 CONTRACTING PARTIES, to modify or not to proceed with the proposed measure.

58. Paragraphs 15 to 17 complete the description of the procedure and define the cases in which the contracting party concerned may act with or without the concurrence of the CONTRACTING PARTIES.

59. The provisions of paragraph 18 relate to the cases where the measure affects a product on which a tariff concession has been granted. In those cases, the procedure is similar to the one proposed by Working Party II for the renegotiation of tariffs under Section A; suitable adjustments have, however, been introduced in this paragraph and in the related interpretative note to take account of the fact that these provisions refer, not to a withdrawal or modification of a tariff concession, but to the impairment of a tariff concession by the introduction of a measure deviating from the obligations under the Agreement.

60. The representative of Cuba proposed to amend the text of the interpretative note to indicate that the temporary suspension of concession referred to in that note would be such as the CONTRACTING PARTIES do not disapprove. The Working Party agreed that this insertion was unnecessary since other provisions of the Agreement adequately deal with that point.

61. Paragraph 19 is designed to meet the special case of a new industry which has received incidental protection through restrictions maintained previously for balance-of-payments reasons. As indicated in the interpretative note to this paragraph, the resort to this provision is limited to the case of the establishment of a new industry or of a new branch of production and of the substantial transformation of an existing industry by a contracting party coming within the definition of paragraph 4(a) and the measure has to be of the type defined in paragraph 13 of the Article. The provisions of paragraph 19 could therefore be invoked only when through the existence of balance-of-payments import restrictions, the contracting party concerned would not have been in a position to assess the competitive position of the industry concerned before the end of the reasonable period of time referred to in paragraph 13 of this Article.

62. Paragraph 20 lays down a number of conditions to which the application of measures taken under Section C (or D) would be subjected. The main condition is the observance of the rule of non-discrimination; to this requirement has been added a provision similar to that contained in Article XII and Section B of Article XVIII regarding token imports, etc. It is the intent of that provision 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.

63. Paragraph 21 provides for the right of a contracting party affected by a measure introduced under this Section without the express or tacit concurrence of the CONTRACTING PARTIES to take the necessary measures to redress the balance of benefits. The language of this paragraph is similar to that of paragraph 3(a) of Article XIX with an additional reference to consultation under Article XXII. In this connexion, the question was raised whether and to what extent the concurrence by the CONTRACTING PARTIES in a measure proposed under Article XVIII would affect the right of a contracting party to resort to Article XXIII. The Working Party agreed on the following interpretation which would apply to paragraph 21 of Article XVIII, but would not in any way prejudice the interpretation of Article XXIII in other cases: although it is understood that the concurrence of the CONTRACTING PARTIES in a measure under paragraphs 16, 19 or 22, or the fact that the CONTRACTING PARTIES, as envisaged in paragraph 15, did not request 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 CONTRACTING PARTIES, 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 CONTRACTING PARTIES 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 CONTRACTING PARTIES.

64. Section D which maintains certain facilities which were open to contracting parties under Article VIII subject to the approval of the CONTRACTING PARTIES, is self explanatory. The contracting parties which may resort to the provisions of that Section are those which come within the scope of the definition in sub-paragraph 4(b) of the Article; the scope of the Section and the procedural provisions of that Section are the same as for Section C, but in all cases the measures without exception have to be concurred in by the CONTRACTING PARTIES before they can be introduced.

65. Finally, the Working Party recommends the insertion of a certain number of notes in Annex I of the Agreement. The object of these notes is to define a number of terms used in the Article and to serve as a guidance to the CONTRACTING PARTIES when they consider cases under the Article. It should be added, with respect to the interpretative note ad paragraphs 13 and 14 referring to a "reasonable period of time", that it is recognized that this period should normally not exceed two years from the date on which the industry concerned started production.

ANNEX TO PART II OF THE REPORT

TEXT OF THE PROPOSED REDRAFT OF ARTICLE XVIII

The text of Article XVIII shall read:

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

"6. The CONTRACTING PARTIES recognize that the export earnings of contracting parties whose economies are of the type described in paragraphs 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 such a contracting party's exports of primary commodities are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII.<sup>1</sup>

"Section A"<sup>2</sup>

"7. If a contracting party coming within the definition set out in sub-paragraph (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 people, to modify or cease to apply a tariff concession included in a Schedule to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiation with any other contracting party with which such concession was initially negotiated, and with any other contracting parties which the CONTRACTING PARTIES determine to have a substantial interest in such concession. If agreement is reached between the contracting parties concerned, the appropriate Schedules to this Agreement shall be amended to give effect to such agreement, including any compensatory concessions involved. If agreement with regard to compensatory concessions is not reached within a period of sixty days, the contracting party which proposes to modify or cease to apply the concession may refer the matter to the CONTRACTING PARTIES. Upon such reference the CONTRACTING PARTIES shall promptly examine the matter and, if they find that the contracting party which proposes to modify or cease to apply the concession 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. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw a concession is adequate but do find that the contracting party 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 which was determined by the CONTRACTING PARTIES to have a substantial interest in the concession shall be free,

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<sup>1</sup> Text approved by Review Working Party IV; see paragraph 41 of this Report.

<sup>2</sup> Text approved by Review Working Party II; see paragraph 43 of this Report.

not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such modification or withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the contracting party which has taken the action.

"Section B

"8. The contracting parties recognize that countries coming within the definition set out in sub-paragraph (a) of paragraph 4 of this Article tend, when they are in rapid process of development, to experience balance-of-payment 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 definition set out in sub-paragraph (a) of paragraph 4 of this Article may, subject to the provisions of paragraphs 10 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.

"10. 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.

"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 above 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 import restrictions under this Section shall enter into consultations of the type defined 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.<sup>1</sup>

"(c)(i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) above, 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.<sup>2</sup>

"(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 one or more contracting parties is caused or threatened

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<sup>1</sup> Reservation by the Pakistan representative.

<sup>2</sup> Reservation by the Chilean representative.

thereby, they shall so inform the contracting party and shall make appropriate recommendations for securing compliance within a specified period of time with such provisions. If the contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party whose trade 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 import 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 parties concerned have not been successful. If, as a result of such consultations, no agreement is reached and the CONTRACTING PARTIES determine that the restrictions are being applied inconsistently with those 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) When proceeding in accordance with 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. The CONTRACTING PARTIES shall make provision for the utmost secrecy in the conduct of any consultation.

### "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 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 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 CONTRACTING PARTIES 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 CONTRACTING PARTIES, 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 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 above, 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 from the date of notification under paragraph 14 above, the CONTRACTING PARTIES have not concurred in the proposed measure, the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES.<sup>1</sup>

"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 CONTRACTING PARTIES determine to have a substantial interest in the product. 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 outlined in paragraph 13 above and is satisfied

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<sup>1</sup> Reservation by the South African representative.

- "(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 CONTRACTING PARTIES, 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 CONTRACTING PARTIES.

"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 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 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.<sup>1</sup>

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<sup>1</sup> Reservation by the South African representative.

"Section D<sup>1</sup>

"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 CONTRACTING PARTIES for approval of such measure. The CONTRACTING PARTIES shall promptly consult with the contracting party and shall, in making their decision, be guided by the considerations set out in paragraph 16 of this Article. 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 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."

- I. The interpretative notes in Annex I, ad Article XVIII, paragraph 3 and paragraph 7(a) (ii) and (iii) shall be deleted, and the following text shall be inserted:

"Ad Article XVIII

"Paragraphs 1 and 4

"Note 1: It is agreed that when it considers 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 its 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 the contracting party concerned.

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

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<sup>1</sup> Reservation on Section D by the Canadian representative.

"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.<sup>1</sup>

"Paragraph 11

"The second sentence in paragraph 11 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 9 of Article XVIII.

"Paragraph 12(c) (ii) and (d)

"If a contracting party against which action has been taken in accordance with the last sentence of paragraph (c) (ii) or (d) of paragraph 12 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 of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the expiration of sixty days from the day on which such notice is given.

"Paragraphs 13 and 14

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

"Note 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

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<sup>1</sup> The representatives of Ceylon, India, Pakistan and Turkey reserved their position on this note.

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.

"Note 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 primary commodity on which the economy of a contracting party is largely dependent.

"Paragraph 18

"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 applicant contracting party during such time as the deviation from the other Articles of the Agreement would remain in force or of the temporary suspension by contracting parties substantially affected 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 country coming within the definition set out in sub-paragraph (a) of paragraph 4, the CONTRACTING PARTIES have determined that the extent of 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 Interpretative Note ad paragraph 14, and should not be so construed as to deprive a contracting party coming within the definition set out in sub-paragraph (a) of paragraph 4 of this Article, 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 expiry of the ninety-day time limit specified in paragraph 17."