

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Twelfth Session

Working Party on Balance of Payments

DRAFT REPORT ON ACTION TO IMPLEMENT THE REVISED PROVISIONS OF ARTICLES XII AND XVIII:B

1. The present report of the Working Party deals with paragraph 5 of its terms of reference, whereby it was instructed:

"To recommend action by the CONTRACTING PARTIES, insofar as the contracting parties which have accepted the Protocol Amending the Preamble and Parts II and III are concerned, in implementing the revised provisions of Article XII and of Section B of Article XVIII, and any changes in the intersessional procedures that may be necessary in the light of the revised provisions of these Articles."

A. Review of Restrictions

2. The Working Party noted that the first action to be taken by the CONTRACTING PARTIES under the revised text was provided for in paragraph 4(b) of Article XII and paragraph 12(b) of Article XVIII, viz. a review of all balance-of-payments restrictions at a date to be determined by the CONTRACTING PARTIES. According to the Notes in Annex H relating to those provisions, the date should be within ninety days of the entering into force of the amendments, in absence of reasons to the contrary. As the Amending Protocol came into force on 7 October 1957, the CONTRACTING PARTIES should, therefore, determine a date not later than 5 January 1958. Taking account of all relevant factors, the Working Party recommends that the CONTRACTING PARTIES determine that the review under Article XII:4(b) and Article XVIII:12(b) be initiated on 2 January 1958 and completed at the Thirteenth Session.

3. The Working Party wishes to take this opportunity to put on record its understanding of the nature and the scope of the review. From the text of the Articles and the report of the relevant Review Working Party of the

Ninth Session¹ it is clear that the review was intended to provide an occasion for the CONTRACTING PARTIES to take stock of the restrictions in existence, in preparation for the effective administration of the revised provisions on a continuing basis. A study would be made of the general degree and extent of the restrictions applied by contracting parties as a whole, as well as the level, methods and effects of the restrictions applied by individual countries. The CONTRACTING PARTIES would also take account of all the factors creating the condition which necessitated the maintenance of restrictions. The Review might therefore lead to the CONTRACTING PARTIES formulating certain general observations or conclusions regarding the state of international trading relations.

4. If the recommendation in paragraph 2 is accepted by the CONTRACTING PARTIES the Working Party recommends that the Executive Secretary be instructed to commence the substantive work of the review at the beginning of 1958. All contracting parties applying import restrictions under Article XII or Section B of Article XVIII should be requested to co-operate in his task by providing information on their restrictions. In most cases this would mean the bringing up to date of the information supplied in connexion with the consultations carried out in 1957 and preparing, in consultation with the governments concerned, background data relating to contracting parties which did not consult under the 1957 consultations programme. For this purpose, the Executive Secretary should make the necessary arrangements with the governments concerned and advise them as regards the date by which information from them should be supplied. On the basis of the available information the Executive Secretary should prepare a document for discussion and approval at the Thirteenth Session of the CONTRACTING PARTIES.

5. The Working Party recognized that there was some question as to whether it would be appropriate for the review to cover the restrictions in force in countries which by the time of the review had not yet accepted the amendments to Article XII. The Working Party considers however, that the review will so clearly be of general interest and value to all contracting parties that these countries would wish to associate themselves fully with it.

¹BISD, 3rd Supplement, p.172

B. Periodic Consultations

6. In accordance with the provisions of Article XII:4(b) and XVIII:12(b), the contracting parties applying import restrictions for balance-of-payments reasons should enter into periodic consultations with the CONTRACTING PARTIES one or two years after the initiation of the review, according to whether the country operates under Article XII or under Article XVIII. If the review is initiated at the beginning of 1958, the series of consultations with countries governed by Article XII would begin early in 1959 and those with countries acting under Article XVIII, at the beginning of 1960. The Working Party recommends that the Executive Secretary be instructed to make recommendations on arrangements and procedures for the carrying out of these consultations, for consideration by the Intersessional Committee or at the latest by the CONTRACTING PARTIES at their Thirteenth Session.

7. In drawing up his recommendations the Executive Secretary will no doubt take advantage of the experience gained in the course of the consultations held in 1957. The Working Party, for example, was of the opinion that in considering the timing of individual consultations the Executive Secretary should consult the convenience of the consulting government, and also co-ordinate the programme as closely as possible with that of the International Monetary Fund. The International Monetary Fund has indicated that it will be prepared fully to co-operate with the CONTRACTING PARTIES in the consultations to be held from 1959.

C. Intersessional Procedures

8. Paragraph 4(b) of Article XII, in its unamended form, provides inter alia that:

"The CONTRACTING PARTIES ... shall invite any contracting party substantially intensifying such restrictions to consult within thirty days".

The corresponding provision in the revised text (Articles XII:4(a) and XVIII:12(a)) provides that:

"Any contracting party ... raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after ... intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES ...".

With the revision of the text the obligation to initiate a consultation has passed from the CONTRACTING PARTIES to the contracting party applying the restrictions.

9. In view of this, the Working Party wishes to call attention to the fact that the last sentence of paragraph 9 of the current Intersessional Procedures will not be relevant for the operation of the revised text of Article XIII or of Section B of Article XVIII, although it remains valid for those contracting parties which continue to operate under the old text of Article XIII. The sentence in question reads as follows:

"Upon the basis of this information (i.e. detailed information supplied by a contracting party modifying its import restrictions) the Chairman and the Executive Secretary determine whether there is a prima facie case for initiation of a consultation under Article XIII:4(b)."

10. The Working Party recommends that a note on this point be inserted in the Intersessional Procedures.