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DRAFT REPORT OF WORKING PARTY 3 ON CONSULTATION

PROCEDURE UNDER ARTICLES XII, XIII, AND XIV - EXCLUDING

ARTICLE XII 4 (a)

Introduction

1. This report is submitted by the Working Party in accordance with the additional terms of reference contained in GATT/CP.3/WP.3/16 which required the Working Party: "In the light of the discussion in the CONTRACTING PARTIES, to examine if and to what extent a procedure analogous to that proposed in GATT/CP.3/30 may also be utilised in appropriate cases arising under the provisions of Articles XII to XIV, inclusive, other than Article XII 4 (a); and to make a report to the CONTRACTING PARTIES."

Scope of the examination

2. Having in mind the need to establish some interim procedure for urgent consultation cases during the ensuing inter-session period, the Working Party, as a result of its examination, concluded that the following paragraphs and sub-paragraphs of Articles XII, XIII, and XIV, excluding ~~Article~~ Article XII 4 (a), would require consideration in accordance with the terms of reference of the Working Party:

Article XII, paragraphs 4 (b), 4 (c), 4 (d), and 5;

Article XIII - paragraph 4;

Article XIV - paragraphs 1 (h) and 2;

Annex J - paragraph 3.

Procedure under Article XII 4 (a)

3. The consultation process appropriate for Article XII 4 (a) as provided for in GATT/CP.3/30/Rev.1 was envisaged as follows:

- a) a request by a contracting party to the Chairman of the CONTRACTING PARTIES for consultation;
- b) notification by the Chairman of the request to the CONTRACTING PARTIES and determination by the Chairman as to whether the consultation with the CONTRACTING PARTIES shall:

- (i) take place at the next ordinary session; or

- (ii) take place at a special session; or

- (iii) be first entrusted to an ad hoc committee appointed by the Chairman.

4. In the course of its examination, the Working Party concluded that, in general, the procedure outlined in paragraph 3 of this report would be appropriate in those cases where the initiative for consultation was exercised by an individual contracting party whose measures or proposed measures are in question. In the view of the Working Party, the following cases fell within this group (see details in paragraphs 14, 15, 22, 23 and 24 of this report):

Article XII - paragraph 4 (c);

Article XIV - paragraph 2;

Annex J - proviso in paragraph 3.

Modification in the Article XII 4 (a) procedure.

5. In those other cases where the initiative is to be exercised by the CONTRACTING PARTIES, or where the consultations or discussions involved would have broader implications, for example, those which might result in formal representations or other formal action by the

CONTRACTING PARTIES, the Working Party felt that some modification in the procedure adopted for Article XII 4 (a) would generally be necessary.

6. In respect of Article XIII 4 (b) and Article XIII 4, it was felt that, in view of the nature of the consultations involved, as explained in paragraphs 11, 12, 13 and 20 of this report, a procedure similar to that for consultations under Article XII 4 (a) might be adopted, except that a canvass should be made by the Chairman as to whether a majority of the contracting parties agree that a consultation should be initiated.

7. It was also felt, in view of the nature of the consultations involved, that in respect of the under-mentioned provisions, the procedure for consultation should be modified to provide for (a) a canvass by the Chairman as to whether a majority of the contracting parties agreed that a consultation should be initiated, and (b) the use of a committee selected by the CONTRACTING PARTIES, instead of an ad hoc committee appointed by the Chairman:

Article XII - paragraphs 4 (d) and 5;

Article XIV - paragraph 1 (h);

Annex J - paragraph 3, excluding the proviso.

8. The canvass. The Working Party considered that in the conduct of a canvass, the Chairman should provide the contracting parties with as much information as possible in order that the contracting parties would be in a position to furnish their views as to the urgency of the consultation and the course of action most favoured.

9. In order to implement the suggestion regarding a canvass contained in paragraph 6 of this report, the Working Party considered that some specific recommendations on the procedure for canvassing the views of the contracting parties would be appropriate. A draft

set of rules for taking a telegraphic or postal ballot is annexed to this report.

10. The selected committee. As envisaged by the Working Party, the committee to be selected at this session of the CONTRACTING PARTIES should consist of not more than ten members (representative of the CONTRACTING PARTIES). In addition it was felt that, following the procedure approved in GATT/CP.3/30/Rev.1, paragraph 9, the Chairman of the CONTRACTING PARTIES should be authorized to invite as an observer any contracting party whose interests are likely to be seriously concerned, either on the request of the individual contracting party or of the committee.

Procedure under relevant paragraphs of Article XII.

11. Article XII 4 (b) The Working Party recognized that two types of consultation were involved under this provision:

Consultation type 1 : "The CONTRACTING PARTIES may at any time invite any contracting party which is applying import restrictions under this Article to enter into such consultations with them....."

Consultation type 2: "The CONTRACTING PARTIES.... shall invite any contracting party substantially intensifying such restrictions to consult within thirty days."

12. As envisaged by the Working Party, the first type of consultation would involve, during the inter-session period, a canvass by the Chairman of the CONTRACTING PARTIES of the views held by the contracting parties as to whether an invitation to consult should be extended to the particular contracting party. At the same time the Chairman would seek the views of the contracting

parties as to whether the consultation should take place at the next ordinary session, at a special session of the CONTRACTING PARTIES, or commence with an ad hoc committee. If the majority of the contracting parties agree, the Chairman should then invite the contracting party to consult accordingly with the CONTRACTING PARTIES.

13. In the second case of consultation under this provision, the procedure should be the same as that envisaged for the first case except that, in the process of canvassing the views of the contracting parties, a majority decision of the contracting parties that the individual contracting party concerned had become a "contracting party substantially intensifying such restrictions" would require the Chairman of the CONTRACTING PARTIES to invite the individual contracting party to consult within thirty days. In so far as the use of an ad hoc committee was concerned under this paragraph, the Working Party noted that, in such types of consultation, paragraph 4 (b) explicitly provides that: "The CONTRACTING PARTIES may invite any other contracting party to take part in these discussions." It was also noted that consultations which would take place under paragraph 4 (b) would be of the same general nature as those under paragraph 4 (a). Therefore, in this case, the Committee felt that an ad hoc committee appointed by the Chairman would be appropriate.

14. Article XII 4 (c) The paragraph provides that any contracting party may consult with the CONTRACTING PARTIES with a view to obtaining their prior approval for restrictions which the contracting party proposes, under Article XII, to maintain, intensify or institute or for the maintenance, intensification or institution of restrictions under specified future conditions.

15. It was considered by the Working Party that the consultation procedure approved in GATT/CP.3/30/Rev.1 could be applied appropriately to the provisions of Article XII 4 (c). On the receipt of a request from an individual contracting party for a consultation with the CONTRACTING PARTIES under Article XII 4 (c), the Chairman of the CONTRACTING PARTIES should take the steps described in paragraphs 7, 8 and 9 of GATT/CP.3/30/Rev.1

16. Article XII 4 (d). Under this paragraph, any contracting party which considers that another contracting party is applying restrictions under Article XII inconsistently with the provisions of paragraphs 2 and 3 of that Article or with those of Article XIII (subject to Article XIV) may bring the matter for discussion to the CONTRACTING PARTIES.

17. Although the initiative rests in this case with an individual contracting party, the Working Party felt, in view of the obligations placed on the CONTRACTING PARTIES under paragraph 4 (d), that, if, after a canvass, it is decided to entrust the matter initially to a committee, a committee selected by the CONTRACTING PARTIES at this session would be more appropriate than an ad hoc committee appointed by the Chairman.

18. It was suggested in the Working Party that consultation in this instance should not be entrusted to a committee but should be undertaken only by the CONTRACTING PARTIES. The Working Party, while noting this view, considered that in some cases a committee might be useful in assisting the CONTRACTING PARTIES to effect a settlement of the differences. The Working Party was also of the opinion that, in cases of this nature, the contracting party whose measures are in question should be given the opportunity to supply to the Chairman information for despatch by him with other material to the contracting parties when making a canvass regarding the consultation.

19. Article XII 5 Under this paragraph the CONTRACTING PARTIES may initiate general discussions to consider whether other measures might be taken to remove underlying causes of disequilibrium in international trade. Because of the broad nature of such discussions the Working Party considered that generally these issues would be dealt with in regular or special sessions of the CONTRACTING PARTIES. To the extent that a committee might be utilized for inter-session discussions, it was felt that a committee selected by the CONTRACTING PARTIES would be appropriate.

Procedure under Article XIII, paragraph 4.

20. Article XIII 4. Under the proviso in this paragraph the CONTRACTING PARTIES may request an individual contracting party to consult regarding quotas established under Article XIII. The Working Party felt that, before initiating consultation, the views of the CONTRACTING PARTIES should be canvassed and that in this case an ad hoc committee appointed by the Chairman would, in view of the localized effect of such quotas, be appropriate.

Procedure under the relevant paragraphs of Article XIV

21. Article XIV 1 (h). Under this paragraph the CONTRACTING PARTIES may, in exceptional circumstances, make representations to any contracting party entitled to take action under Article XIV 1 (c) that conditions are favourable for the termination of any particular deviation from the provisions of Article XIII, or for the general abandonment of deviations under Article XIV 1 (c). The Working Party considered that the modified procedure outlined in paragraph 7 of this report would be appropriate.

22. Article XIV 2. A contracting party applying import restrictions under Article XII may, under the provisions of Article XIV, paragraph 2, with the assent of the CONTRACTING PARTIES,

temporarily deviate from the provisions of Article XIII. The Working Party considered that the consultation procedure adopted for Article XII 4 (a) would be appropriate in this case.

23. Annex J, paragraph 3. The Working Party noted that two possible situations were envisaged under the provisions of this paragraph:

(a) where the CONTRACTING PARTIES find that import restrictions are being applied by a contracting party in a discriminatory manner inconsistent with the exceptions provided for under paragraph 1 of Annex J;

(b) where an individual contracting party requests the approval of the CONTRACTING PARTIES for action under paragraph 1 of Annex J, under a procedure analogous to that of paragraph 4 (c) of Article XII.

24. In the view of the Working Party, the modified procedure discussed in paragraph 7 of this report seemed to be appropriate for the first situation. In the second case, the Working Party felt that the procedure already adopted for Article XII 4 (a) would be appropriate.

25. In both instances, the Working Party noted that insofar as information called for in paragraph 2 of Annex J may be required to permit the effective use of paragraph 3, it would be appropriate to authorize the Chairman of the CONTRACTING PARTIES to establish the necessary arrangements to obtain such information.

A N N E X.

Consultation Procedure during Intersession Periods

Rule A:

Decisions of the CONTRACTING PARTIES may in the intervals between the sessions of the CONTRACTING PARTIES be taken by air mail or telegraphic ballot.

Rule B :

The Chairman of the CONTRACTING PARTIES, upon application by a contracting party for an air mail or telegraphic ballot or upon his own initiative, shall in each case decide whether the matter is sufficiently urgent to warrant the taking of an air mail or telegraphic ballot and whether such a procedure is practicable

Rule C :

In any case where the Chairman of the CONTRACTING PARTIES decide that an air mail or telegraphic ballot should be taken, he shall determine the date and hour by which votes must be received. Any contracting party from which a vote has not been received within such time limit shall be regarded as not voting

Rule D :

In any case where the Chairman of the CONTRACTING PARTIES decide that an air mail or telegraphic ballot should be taken, he shall despatch a letter or telegram to each contracting party. The letter or telegram shall contain such information as the Chairman considers necessary and a clear statement of the question to which each contracting party shall be requested to answer "yes" or "no".