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Article XIV

Exceptions to the Rule of Non-discrimination

1. A contracting party which applies restrictions under Article XII or under Section B of Article XVIII may, in the application of such restrictions, 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 apply under Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.*

2. A contracting party which is applying import restrictions under Article XII or under Section B of Article XVIII may, with the consent of the CONTRACTING PARTIES, 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.*

3. The provisions of Article XIII shall not preclude a group of territories having a common quota in the International Monetary Fund from applying against imports from other countries, but not among themselves, restrictions in accordance with the provisions of Article XII or of Section B of Article XVIII on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

4. A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII.
5. A contracting party shall not be precluded by Articles XI to XV, inclusive, or by Section B of Article XVIII, of this Agreement from applying quantitative restrictions:

(a) having equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund, or

(b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

Interpretative Notes from Annex I

Ad Article XIV

Paragraph 1

The provisions of this paragraph shall not be so construed as to preclude full consideration by the CONTRACTING PARTIES, in the consultations provided for in paragraph 4 of Article XII and in paragraph 12 of Article XVIII, of the nature, effects and reasons for discrimination in the field of import restrictions.

Paragraph 2

One of the situations contemplated in paragraph 2 is that of a contracting party holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

Ad Articles XI, XII, XIII, XIV and XVIII

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations.

From Annex A:

The preferential arrangements referred to in paragraph 5 (b) of Article XIV are those existing in the United Kingdom on 10 April 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork and bacon. It is the intention, without prejudice to any action taken under sub-paragraph (h) of Article XX, that these arrangements shall be eliminated or replaced by tariff preferences, and that negotiations to this end shall take place as soon as practicable among the countries substantially concerned or involved.

II. INTERPRETATION AND APPLICATION OF ARTICLE XIV

A. SCOPE AND APPLICATION OF ARTICLE XIV

1. General

The Articles of the General Agreement concerning quantitative restrictions for balance-of-payments purposes were redrafted in the 1954-55 Review Session. The principal source concerning the drafting of these provisions is the Report of the Review Working Party on “Quantitative Restrictions”\(^1\), which notes generally concerning the amendments to Article XIV:

“On the one hand, they amount to a deletion of temporary provisions (i.e. sub-paragraphs 1(a) and 3(b)) which are no longer applicable; on the other hand, they provide for the elimination of alternative rules of procedure (sub-paragraphs 1(c) to (h) and Annex J which were necessary so long as a number of

\(^1\)L/332/Rev.1 and Addenda., adopted on 2, 4 and 5 March 1955, 3S/170-185.
countries were governed by the provisions of Article XIV of the IMF Agreement but which will be redundant when many of those countries cease to be governed by those provisions”.

The first of these two groups of amendments to Article XIV entered into effect on 7 October 1957 with the other Review Session amendments. The second group entered into effect on 15 February 1961 when the obligations of Sections 2, 3 and 4 of Article VIII of the Articles of Agreement of the International Monetary Fund became applicable to contracting parties, members of the Fund, the combined foreign trade of which constituted at least 50 per cent of the aggregate foreign trade of all contracting parties.

In 1959, the Tenth Annual Report under Article XIV:1(g) on the discriminatory application of import restrictions noted that external convertibility of most of the major currencies had been established at the end of 1958, and further noted:

“The Board of Executive Directors of the International Monetary Fund on 23 October 1959 approved the following decision with regard to the discriminatory restrictions imposed for balance-of-payments reasons:

‘The following decision deals exclusively with discriminatory restrictions imposed for balance-of-payments reasons.

‘In some countries, considerable progress has already been made towards the elimination of discriminatory restrictions; in others, much remains to be done. Recent international financial developments have established an environment favourable to the elimination of discrimination for balance-of-payments reasons. There has been a substantial improvement in the reserve positions of the industrial countries in particular and widespread moves to external convertibility have taken place.

‘Under these circumstances, the Fund considers that there is no longer any balance-of-payments justification for discrimination by members whose current receipts are largely in externally convertible currencies. However, the Fund recognizes that where such discriminatory restrictions have been long maintained a reasonable amount of time may be needed fully to eliminate them. But this time should be short and members will be expected to proceed with all feasible speed in eliminating discrimination against member countries, including that arising from bilateralism.

‘Notwithstanding the extensive moves toward convertibility, a substantial portion of the current receipts of some countries is still subject to limitations on convertibility, particularly in payments relations with State-trading countries. In the case of these countries the Fund will be prepared to consider whether balance-of-payments considerations would justify the maintenance of some degree of discrimination, although not as between countries having externally convertible currencies. In this connexion the Fund wishes to reaffirm its basic policy on bilateralism as stated in its decision of 22 June 1955.’

“This decision was communicated to the CONTRACTING PARTIES at their fifteenth session where it was welcomed …”

“The CONTRACTING PARTIES reaffirmed that the removal of discrimination applied under Article XIV is a vital step towards the achievement of the objectives of the General Agreement and the expansion of international trade. There was a consensus that the remaining discrimination applied under Article XIV of the General Agreement should quickly be eliminated”.

Since 1961, no contracting party has invoked Article XIV.
2.  Paragraph 1

(1) Intent of Paragraph 1

The Report of the Review Working Party on “Quantitative Restrictions” notes that “As regards the amended text of paragraph 1 of Article XIV, it reproduces the text of sub-paragraph 1(b) of the present Article, except that it refers, not only to Article XIV of the International Monetary Fund as is the case at present, but also to Article VIII. This addition is intended to cover cases where contracting parties are authorized by a decision taken by the International Monetary Fund, in accordance with Article VIII of its Articles of Agreement, to deviate from the rule of non-discrimination”.

See also the Interpretative Note to Article XIV and the discussion of paragraph 5(a) below at page 422.

(2) “equivalent effect”

The Report of the Review Working Party on “Quantitative Restrictions” notes:

“For practical reasons, the Working Party has not tried to define the phrase ‘equivalent effect’ in paragraphs 1 and 5 of Article XIV. It agreed, however, to record their view that a contracting party which is deviating from Article XIII will not be considered to be in breach of its obligations under this paragraph if the International Monetary Fund has stated that corresponding restrictions on payments and transfers would have been authorized under the Articles of Agreement of the Fund or approved by the Fund if the contracting party in question had chosen to proceed by way of exchange restrictions rather than trade restrictions …

“… it was pointed out that under … paragraph 1 of the proposed new Article XIV, a contracting party could deviate from the provisions of Article XIII only in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party might at that time apply under the Articles of Agreement of the International Monetary Fund; it was understood that such restrictions could be applied only on currency grounds”.

Concerning the distinction between exchange restrictions and trade restrictions, see material under Article XV.

(3) “which that contracting party may at that time apply”

During the 1954-55 Review Session, the Review Working Party on Quantitative Restrictions established a Special Sub-Group on GATT/Fund relations. The report of this Sub-Group notes as follows regarding discrimination permissible under Articles VIII and XIV of the Fund Articles of Agreement:

“… the Fund representatives explained that Fund members which did not avail themselves of the transitional arrangements of Article XIV of the Fund Articles of Agreement had to seek prior approval from the Fund, under paragraph 2(a) (or in respect of discriminatory currency arrangements or multiple currency practices, under paragraph 3) of Article VIII for the imposition of restrictions on the making of transfers and payments for current international transactions. Fund members which availed themselves of the transitional arrangements under Article XIV could, subject to annual consultations with the Fund, continue to maintain exchange restrictions and adapt them to changing circumstances so long as they were needed for balance of payments purposes. The Fund could, if it deemed such action necessary in exceptional circumstances, make representations to such members that conditions were favourable for the withdrawal of any particular restriction, or for the general abandonment of restrictions inconsistent with the provisions of any other Article of the Fund Agreement.”

\[L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 176-177, para. 26.\]

\[Ibid., 3S/177, paras. 28, 29.\]
“In relation to multiple exchange rates, the Fund representatives recalled that the Executive Board of the Fund in December 1947, took certain decisions relating to such practices …”.\(^6\)

A copy of the Fund Decision regarding multiple currency practices was annexed to the Sub-Group’s Report.\(^7\)

(4) Discrimination resulting from bilateral agreements

A Note by the Executive Secretary on “Questions Relating to Bilateral Agreements, Discrimination and Variable Taxes” of 1961 states, \textit{inter alia}:

“If the fulfilment of the obligations under the bilateral agreement involves the use of restrictions on imports from any other contracting parties, these restrictions will be matters for examination under the relevant provisions of the Agreement” [such as Articles XI to XIV and XVIII:B].

“If the contracting party is entitled to apply import restrictions and, by virtue of Article XIV of the Agreement, is also entitled to use discrimination, then the relative incidence of the bilateral quota restrictions and the restrictions applying to imports from other contracting parties can be the subject of examination under the provisions of that Article. If there is discrimination involved, it will be permitted under this Article provided it does not go beyond the limit laid down in paragraph 1, 2, 3 or 5 of the Article. Under paragraph 1 of that Article, for example, a contracting party is entitled to deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which the contracting party is applying under the appropriate provisions of the IMF Agreement.”\(^8\)

3. Paragraph 2

It was noted by the Sub-Committee which redrafted Article 23 of the Charter (corresponding to Article XIV) during the Havana Conference, that after the termination of the transitional period for a Member (as defined in Article XIV of the Fund Articles of Agreement) paragraph 2 would provide “subject to the prior approval of the Organization, for limited departures from the rule of non-discrimination.”\(^9\) As noted below, the Charter Article was brought into the General Agreement in 1948.

The 1949 Report of the Working Party on “Consultation Procedures under Articles XII, XIII and XIV - other than Article XII:4(a)” notes that 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.”\(^10\) Article XII:4(a) in 1949 provided that “Any contracting party which is not applying restrictions under this Article, but is considering the need to do so, shall before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately after doing so), consult with the CONTRACTING PARTIES”.

See also the Interpretative Note to paragraph 2.

4. Paragraph 3

The London Report notes that “It was generally agreed that there must be the following exceptions from the general rule of non-discrimination in the application of quantitative restrictions. … A group of territories, which have a common quota in the International Monetary Fund, should be able to impose restrictions against imports

\(^6\)Ibid., 3S/196-197, paras. 4-5.
\(^7\)Ibid., 3S/200-205.
\(^8\)L/1636, p. 2, para. 4.
\(^9\)Havana Reports, p. 99, para. 22.
\(^10\)GATT/CP.3/50/Rev.1, adopted on 4 July 1949, II/95, 100, para. 24. For the consultation procedure agreed for Article XII:4(a), see para. 3 of the same Report, at II/95-96.
of other countries in order to protect their common monetary reserves".11 It was stated during discussions at the London session of the Preparatory Committee that this provision “should only apply where the quantitative restrictions are being applied on balance of payments grounds. If the quantitative restrictions are for other purposes the question of whether the countries are in a common unit in the Monetary Fund is irrelevant”.12

Article III:1 of the Articles of Agreement of the International Monetary Fund provides that “Each member shall be assigned a quota ...” and under Article II of the Articles of Agreement, membership in the Fund is open only to “countries”. Hence, territories can only have a common quota in the Fund if they are under common sovereignty. Article XIV:3 of the General Agreement provides an exception to the non-discrimination requirements of Article XIII:1 of the General Agreement, which apply as between contracting parties. Under Article XXIV:1 of the General Agreement, each separate customs territory on behalf of which the General Agreement is applied is “treated as though it were a contracting party”, and thus the non-discrimination requirements of Article XIII:1 of the General Agreement, which apply as between contracting parties, apply as between each separate customs territory even if it is under common sovereignty with another customs territory. The records of the London session of the Preparatory Committee in 1946 indicate that in 1946, for instance, the various territories under French sovereignty in the French Union included some colonies treated as part of the metropolitan customs territory of France, and others which constituted separate customs territories later listed in Annex B of the General Agreement; nevertheless all of these territories, even those with different currencies with different exchange rates versus the dollar or sterling, shared a common quota in the Fund represented by France.13

5. **Paragraph 4**

Paragraph 4 was added to the Charter in Havana, and subsequently incorporated into the GATT in 1948. It was stated at the time that Committee III at Havana adopted this provision that “A country might only be able to attain equilibrium in its balance of payments by increasing its exports to hard currency countries. If such a country were allowed to continue to direct its exports, it might very well be able to cease practising import discrimination under paragraph 1 at an earlier date than would otherwise be possible”.14

6. **Paragraph 5**

(1) **Quantitative restrictions having equivalent effect to certain authorized exchange restrictions**

Article XIV:5(a) permits quantitative restrictions having equivalent effect to exchange restrictions authorized under Article VII:3(b) of the Articles of Agreement of the International Monetary Fund.

Article VII:3(a) of the Fund Articles provides: “If it becomes evident to the Fund that the demand for a member’s currency seriously threatens the Fund’s ability to supply that currency, the Fund ... shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency ...”. Article VII:3(b) of the Fund Articles provides that “A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV and Schedule C, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question, and they shall be relaxed and removed as rapidly as conditions permit”.

No formal declaration under Article VII:3(a) has been made by the Fund, and therefore no exchange restrictions have been authorized under Article VII:3(b) of the Fund Articles of Agreement.

The Report of the Review Working Party on “Quantitative Restrictions” notes that during the Review Session, various proposals were made to amend the General Agreement to provide for joint action to restore

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12EPCT/C.II/QR/PV/2, p. 21: see generally discussion at ibid. p. 20-21, and see also explanation at EPCT/C.II/PV/4, p. 33.
13See description at EPCT/C.II/PV/4 p. 18-20.
equilibrium in the system of world trade and payments in the event that that system became seriously unbalanced, and to avoid the imposition of unnecessarily severe restrictions on international trade. In relation to two “scarce currency” proposals, designed for a situation where some large and commercially important country might develop a persistent surplus in its balance of payments with the rest of the world, place a strain on other countries’ reserves, and cause a general scarcity of its currency:

“There was general agreement in the Working Party that such a situation might arise from a variety of different circumstances and that the prime responsibility for the state of unbalance might rest either with the surplus or the deficit countries.

“It was noted that provisions are already contained in the General Agreement and also in the Articles of Agreement of the International Monetary Fund to enable consultation to take place on the measures that might appropriately be adopted to meet such situations. …

“If the CONTRACTING PARTIES were to find that strict application of the non-discrimination provisions of Article XIII would cause an unnecessary contraction in world trade there are already provisions in the GATT and in the International Monetary Fund Agreement which could be invoked to waive temporarily the obligation imposed upon contracting parties under that Article to apply import restrictions in a non-discriminatory manner.

“First, the Fund may, if it finds a general scarcity of a currency under Article VII, Section 1, approve discriminatory measures under Article VIII, Sections 2 and 3. Certain important countries which are members of the Fund and GATT have stated that if they supported a finding under Fund Article VII, Section 1, they would also support appropriate action under Article VIII.

“Secondly, Fund Article VII, Section 3, provides that if it becomes evident that the demand for a member’s currency seriously threatens the Fund’s ability to supply that currency, the Fund shall formally declare such currency scarce and such a declaration authorizes certain discriminatory limitations on the freedom of exchange operations in that currency. Although this provision has not operated in the past because the Fund’s ability to supply a currency has never been threatened, it is to be expected that when the resources of the Fund are being used to support the convertibility of currencies, any serious scarcity of a major currency would be reflected in the holdings of the Fund. These provisions of the Fund Agreement bear directly on the question of trade discrimination; for under Article XIV of the GATT, as at present drafted, a contracting party would be able to apply discriminatory quantitative restrictions having equivalent effect to exchange restrictions authorized by the Fund under Article VIII, Section 3, as well as under Article VII, Section 3(b).”

(2) Quota preferences listed in Annex A of the General Agreement

Both in London and Geneva it was recommended that "certain existing preferential arrangements which were established under international agreements but not effected by the normal method of a difference in rates of duty" and which remained after the conclusion of the Geneva negotiations should be dealt with by a provision in the GATT, to the effect that the member applying these arrangements shall be entitled to continue them or equivalent measures, pending either an international commodity agreement under the Charter, or some other arrangement between the members concerned.

“It was agreed that only a very limited number of commodities fell under this heading and that the countries concerned should establish the facts about them so that the above recommendation could be taken into account in the forthcoming negotiations. It was further recognized that the concessions or lack of concessions in respect of the items concerned would, for purposes of assessing the results of the

\[^{15}\text{See } W.19/18, W.9/22, W.9/82, W.9/136, W.9/139, L/325, GATT/174.\]
\[^{16}\text{L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 174-176, paras. 16-17, 19- 21. See also other Review Session documents on these discussions: W.9/18, W.9/22, W.9/82, W.9/136, W.9/139, L/325, GATT/174.}\]
\[^{17}\text{Discussion at EPCT/C.II/QR/PV/1 p. 14, EPCT/C.II/PV/13 p. 26-28; London Report, p. 12, para. n; EPCT/141, p. 2.}\]
negotiations, stand on the same footing as concessions or lack of concessions in respect of particular tariff or preference items”.18

The arrangements in question were certain arrangements existing in the United Kingdom on 10 April 1947, under contractual arrangements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork, and bacon. These arrangements are listed in Annex A of the General Agreement, the relevant parts of which appear at the head of this chapter. Their contractual basis is noted in the preparatory work of this provision.19 During the Review Session of 1954-55 the United Kingdom delegation requested that this provision be retained as the negotiations referred to had not yet taken place.20

B. RELATIONSHIP WITH OTHER ARTICLES

1. Article XVIII

The Review Working Party Report on “Quantitative Restrictions” notes that “Appropriate references to Article XVIII have been introduced in the text of Article XIV; through these insertions, the application of balance-of-payments restrictions by under-developed countries are governed by the provisions of Article XIV as regards deviations from the rule of non-discrimination”.21

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Corresponding provisions in the Havana Charter are contained in Article 23; in the US-UK Proposals in Chapter III C-4; in the US Draft in Article 22; in the London and New York Drafts in Article 28; and in the Geneva Draft in Article 23.

The text of Article XIV and the extent of permissible discrimination in balance-of-payments restrictions were the subject of much negotiation in 1946-48. The Article in the Geneva Draft Charter, which was adopted in the 30 October 1947 text of the General Agreement, was substantially rewritten at Havana; as rewritten, it provided additional flexibility for discriminatory measures in the case of non-convertible currencies. At their First Session, held during the Havana Conference, the CONTRACTING PARTIES decided to replace the original text of Article XIV with the Havana Charter Article.22 This change was effected through the Special Protocol Modifying Article XIV, which entered into effect on 9 May 1949.

The Review Session amendments to paragraph 1 of Article XIV and Annex J, which were provided for in the Protocol Amending the Preamble and Parts II and III, came into effect on 15 February 1961 when the obligations of Sections 2, 3 and 4 of Article VIII of the Articles of Agreement of the International Monetary Fund became applicable to contracting parties, members of the Fund, the combined foreign trade of which constituted at least 50 per cent of the aggregate foreign trade of all contracting parties. Paragraph 1, comprising sub-paragraphs (a) to (i), was replaced by the new paragraph 1, which reproduced, with certain changes, paragraph 1(b) of the previous text. The Interpretative Note to sub-paragraph (g) was replaced by a Note to the new paragraph 1. Annex J and the interpretative Note thereto were deleted.

Other changes agreed upon at the Review Session included the insertion of a reference to Section B of Article XVIII in paragraphs 2, 4 and 5, and a redrafting of paragraph 3; these changes entered into effect on 7 October 1957.

18London Report, p. 12, para. o.
19See EPCT/158, Report on Preferential Arrangements Not Effected by the Method of a Difference in Rates of Duty, and annexed note by UK delegation on agreements with Australia, New Zealand and Canada.
21L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 177, para. 27; see also ibid. 3S/185, para. 50.
### IV. RELEVANT DOCUMENTS

**London**
- **Discussion:** EPCT/C.II/PV/4 (p. 32ff), 5, 13 (p. 15ff), EPCT/C.II/QR/PV/2, 3 (p. 42ff), 6
- **Reports:** EPCT/30; EPCT/C.II/59

**Havana**
- **Discussion:** E/CONF.2/C.3/SR.22, 23, 39 (p. 6), 47
- **Reports:** E/CONF.2/C.3/91
- **Other:** E/CONF.2/C.3/F/W.7, 11, 31/Revs. 1 and 2, 32

**New York**
- **Discussion:** EPCT/C.6/21, 27
- **Reports:** EPCT/C.6/97/Rev.1 (p. 82)

**Geneva**
- **Discussion:** EPCT/EC/PV.2/22, EPCT/A/SR.29, EPCT/A/PV/29/Corr.2, 41 (pp. 42-64), EPCT/TAC/SR.13, 21, EPCT/PV/21, 27, 28
- **Reports:** EPCT/135, 158, 163, 171, 186, 189, 196, 212, 214/Add.1/Rev.1, EPCT/W/313
- **Other:** EPCT/W/64, 194, 214, 216, 223, 256, 272, 301, 318, 327, 329, 331, 336

**CONTRACTING PARTIES**
- **Discussion:** GATT/1/SR.10+Corr.1, 13, 14
- **Reports:** GATT/1/27, 55, 62 Annex 4
- **Other:** GATT/CP/6

**Review Session**
- **Discussion:** SR.9/14, 15, 26, 40, 47
- **Reports:** W.9/106, 126, 130, 174+Add.1, 208, 234; L/332/Rev.1+Adds., 3S/170
- **Other:** L/189, 261/Add.1, 264, 277
- **W.9/18+Add.1, 22, 23, 82, 90, 115, 133, 136, 139, 190, 226, 236/Add.3 Spec/53/55, 58/55, 68/55, 74/55, 90/55, MGT/9/55