

1 ARTICLE XV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 1

1.1 Text of Article XV	1
1.2 Text of note <i>Ad</i> Article XV.....	2
1.3 Article XV:1: "cooperation with the International Monetary Fund"	2
1.4 Article XV:2: Consultation with the Fund	3
1.4.1 Participation by the Fund in balance-of-payments consultations.....	3
1.4.2 Consultation with the Fund in the context of dispute settlement	3
1.5 Article XV:6: special exchange agreements.....	4
1.6 Article XV:9(a).....	4
1.6.1 "in accordance with the Articles of Agreement of the International Monetary Fund"	4

1 ARTICLE XV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

1.1 Text of Article XV

Article XV

Exchange Arrangements

1. The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the CONTRACTING PARTIES and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES.
2. In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund. In such consultations, the CONTRACTING PARTIES shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments, and shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that contracting party and the CONTRACTING PARTIES. The CONTRACTING PARTIES in reaching their final decision in cases involving the criteria set forth in paragraph 2 (a) of Article XII or in paragraph 9 of Article XVIII, shall accept the determination of the Fund as to what constitutes a serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.
3. The CONTRACTING PARTIES shall seek agreement with the Fund regarding procedures for consultation under paragraph 2 of this Article.
4. Contracting parties shall not, by exchange action, frustrate* the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.
5. If the CONTRACTING PARTIES consider, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a contracting party in a manner inconsistent with the exceptions provided for in this Agreement for quantitative restrictions, they shall report thereon to the Fund.
6. Any contracting party which is not a member of the Fund shall, within a time to be determined by the CONTRACTING PARTIES after consultation with the Fund, become a member of the Fund, or, failing that, enter into a special exchange agreement with the

CONTRACTING PARTIES. A contracting party which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the CONTRACTING PARTIES. Any special exchange agreement entered into by a contracting party under this paragraph shall thereupon become part of its obligations under this Agreement.

7. (a) A special exchange agreement between a contracting party and the CONTRACTING PARTIES under paragraph 6 of this Article shall provide to the satisfaction of the CONTRACTING PARTIES that the objectives of this Agreement will not be frustrated as a result of action in exchange matters by the contracting party in question.

(b) The terms of any such agreement shall not impose obligations on the contracting party in exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

8. A contracting party which is not a member of the Fund shall furnish such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the CONTRACTING PARTIES may require in order to carry out their functions under this Agreement.

9. Nothing in this Agreement shall preclude:

(a) the use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that contracting party's special exchange agreement with the CONTRACTING PARTIES, or

(b) the use by a contracting party of restrictions or controls in imports or exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions.

1.2 Text of note *Ad Article XV*

Ad Article XV

Paragraph 4

The word "frustrate" is intended to indicate, for example, that infringements of the letter of any Article of this Agreement by exchange action shall not be regarded as a violation of that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus, a contracting party which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund will not thereby be deemed to contravene Article XI or Article XIII. Another example would be that of a contracting party which specifies on an import licence the country from which the goods may be imported, for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls.

1.3 Article XV:1: "cooperation with the International Monetary Fund"

1. At its meeting on the 8, 9 and 13 November 1996, the General Council approved¹ an Agreement between the International Monetary Fund (IMF) and the World Trade Organization (WTO). This Agreement, signed on 9 December 1996, was accompanied by a letter from the Managing Director of the IMF and an agreed commentary on provisions of the Agreement.²

¹ [WT/L/194](#) and [Add.1-2](#); [WT/GC/M/16](#), section 7.

² [WT/L/195](#); Agreement and accompanying letter from IMF Managing Director in Annex I; Agreed Commentary in Annex III.

1.4 Article XV:2: Consultation with the Fund

1.4.1 Participation by the Fund in balance-of-payments consultations

2. Paragraph 4 of the IMF-WTO Agreement referred to above provides as follows:

"The Fund agrees to participate in consultations carried out by the WTO Committee on Balance-of-Payments Restrictions on measures taken by a WTO member to safeguard its balance of payments. For these consultations, existing procedures for Fund participation shall continue and may be adapted as appropriate in accordance with paragraph 14 below."³

3. The Agreed Commentary on this provision provides:

Comment: The consultations would take place as requested by the WTO for the operation of its rules on trade-related measures taken for balance of payments reasons. This provision makes permanent the provisional agreement contained in a December 1994 exchange of letters between the Fund and the Chairman of the GATT Committee on Balance of Payments to apply to the WTO the procedures that existed vis-à-vis the GATT and to extend such procedures to services.

Under existing procedures, the WTO Secretariat and the Fund's staff coordinate so that the timing of the consultations will be suitable to the consulting Member and the institutions, with a view to ensuring that the Fund is in a position to provide the requisite information. The Fund provides to the WTO Committee on Balance of Payments Restrictions the most recent RED, subject to consent of the member, and supplementary background information (in cases where the RED may require updating) and a statement on the Member's balance of payments situation and external reserve position, which are approved by the Board, normally on a lapse of time basis. The Fund's staff receives and comments on a background document that the WTO Secretariat prepares based in part on the Article IV Consultation Report and background papers that it receives routinely from the Fund (see paragraph 12 on provision of documents). The Fund's representative participates in the discussions and is available to answer questions raised by Committee members."⁴

4. See also the discussion of balance-of-payments consultations in the general document on the General Agreement on Tariffs and Trade 1994 (GATT 1994) (Practice) and the document on Article XVIII of the GATT 1994 (Practice).

1.4.2 Consultation with the Fund in the context of dispute settlement

5. Paragraph 8 of the IMF-WTO Agreement referred to above provides as follows:

"Each organization may communicate its views in writing on matters of mutual interest to the other organization or any of its organs or bodies (excluding the WTO's dispute settlement panels) and such views shall become part of the official record of such organs and bodies. The Fund shall inform in writing the relevant WTO body (including dispute settlement panels) considering exchange measures within the Fund's jurisdiction whether such measures are consistent with the Articles of Agreement of the Fund."⁵

6. The Agreed Commentary on this provision provides:

Comment: This provision allows each organization to communicate its views to any organ or body of the other organization (other than the bodies specifically excluded). While these communications may cover all matters, in practice, they are expected to be used only for purposes of communicating views on important matters of policy and/or jurisdiction. As the views communicated would be views of the organization, they would

³ [WT/L/195](#), p. 3.

⁴ [WT/L/196](#), p. 13.

⁵ [WT/L/195](#), p. 4.

be approved by the appropriate institutional body before their transmittal. The provision also requires that such views be included in the official record of the relevant body or organ, which means they must be noted, but are not binding on the other party.

Also, under this provision, the Fund is required to inform a WTO body considering exchange measures within the Fund's jurisdiction (including a dispute settlement panel) whether such measures are consistent with the Fund's Articles as is relevant for the application of certain provisions in the related agreements (GATT Article XV and GATS Article XI; see also comment on paragraph 3 above).

The scope of this communication is limited to jurisdictional matters and would not include views on policy matters. As the provision of "information" will implement the requirement of consultation with the Fund on consistency of exchange measures with the Fund's Articles, these communications will have official status in the proceedings, which could mean that they will be recorded, for instance, in the reports of the panels to the Dispute Settlement Body."⁶

1.5 Article XV:6: special exchange agreements

7. The Working Party Report on the Accession of Chinese Taipei, which is not a member of the IMF, notes that "in order to comply with GATT 1994 Article XV, Chinese Taipei had negotiated a Special Exchange Agreement."⁷ The Protocol of Accession of Chinese Taipei provides that the Special Exchange Agreement annexed thereto forms an integral part of that Protocol.⁸

1.6 Article XV:9(a)

1.6.1 "in accordance with the Articles of Agreement of the International Monetary Fund"

8. Paragraph 3 of the IMF-WTO Agreement referred to above provides regarding IMF decisions authorizing exchange restrictions, discriminatory currency arrangements or multiple currency practices pursuant to Articles VI or VIII of the IMF Articles of Agreement:

"The Fund shall inform the WTO of any decisions approving restrictions on the making of payments or transfers for current international transactions, decisions approving discriminatory currency arrangements or multiple currency practices, and decisions requesting a Fund member to exercise controls to prevent a large or sustained outflow of capital."⁹

9. The Agreed Commentary on this provision provides as follows:

"Comment: This information on Fund decisions is relevant to the implementation of GATT and GATS because of certain consequences under these Agreements when a measure is consistent with the Fund's Articles (Article XV of GATT 1994 and Article XI of the GATS). Additionally, under the GATS, members are allowed to impose controls on capital transactions related to their scheduled commitments under certain circumstances, including if such controls are imposed at the request of the Fund. In practice, the Fund's authority to request capital controls (Article VI, Section 1(a) of the Fund's Articles) has never been used.

Non-approval of exchange measures that constitute restrictions under the Fund's Articles (and may be subject to consultation on their trade implications under WTO balance-of-payments provisions or action under WTO dispute settlement) would not be separately notified to the WTO. Information on these measures, however, is contained in staff reports on Article IV Consultations, which the WTO Secretariat will receive (see

⁶ [WT/L/195](#), p. 17.

⁷ [WT/MIN\(01\)/4](#), para. 10.

⁸ [WT/L/433](#) (text of Special Exchange Agreement in Annex II).

⁹ [WT/L/195](#), p. 3.

paragraph 11); additionally, the Fund's staff would be ready to respond to the Secretariat's requests for clarifications on their status."¹⁰

10. Communications from the IMF pursuant to paragraph 3 of the IMF-WTO Agreement are circulated in the [WT/TF/IMF/*](#) document series.¹¹

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¹⁰ [WT/L/195](#), p. 12.

¹¹ See also Panel Report, *Dominican Republic – Import and Sale of Cigarettes*, para. 7.148, referring to these notices.