

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Ninth Session

Review Working Party I on
Quantitative Restrictions

PROGRESS IN THE DISCUSSION OF ARTICLE XVIII

Resumé of the Report of the Chairman of Sub-Group I-A

1. As instructed by the Working Party, the Sub-Group considered the various proposals concerning quantitative restrictions for economic development. It decided to postpone a discussion of the proposals concerning balance-of-payments import restrictions for under-developed countries until it has had access to the progress report of the Sub-Group dealing with Articles XII to XIV.
2. The Sub-Group was not able to resolve all differences between the positions taken by various delegations. There remained, for example, important divergencies of views on the following points:
 - (i) whether it was necessary to draft a new Article XVIII along the lines of the secretariat draft, or to amend the present Article XVIII;
 - (ii) whether prior approval for measures applied for development purposes should be replaced by prior consultation in certain cases;
 - (iii) if prior consultation is accepted, whether contracting parties affected by a measure in which the Organization has not concurred, should be allowed to take compensatory action in a way similar to that permitted under Article XIX, or whether they should rely on Articles XXII and XXIII;
 - (iv) whether a system of prior approval should be retained for contracting parties which are in process of economic development, but which do not have a low standard of living.
3. The Sub-Group addressed itself to a re-draft of the text submitted by the secretariat for a new Article XVIII (W.9/17). On behalf of the Sub-Group, I submit a new version of the introductory part and Sections C, D and E of the Article, resulting from the Sub-Group's discussion (W.9/101). This new version takes account of most of the suggestions put forward and may offer a convenient basis for further discussion.

4. In addition, the Sub-Group considered a number of points which had a bearing on the interpretation of the draft, or which were raised in connection with that draft. The generally agreed views on these points will have to be recorded in the final report which will accompany the text of the new Article XVIII. Certain other points, however, will have to be examined in connection with other Articles of the Agreement. The following two points are put forward as an illustration of these points:

- (i) The Chilean delegation proposed the inclusion in the Article of a provision similar to that of paragraph 3(b) of Article XII of the present Agreement. The Sub-Group noted that such a provision could be appropriate only if the Organization were empowered to require the withdrawal or modification of a measure taken. If Section C of the new draft were accepted, the Organization would have no such power, and therefore the insertion of such a provision would not serve any purpose. On the other hand, this question might be considered in connection with Article XXIII, under which, the Organization might, in the consideration of a complaint, make such a recommendation.
- (ii) The question was raised as to whether, after the Organization had concurred in a proposed measure, any country materially affected by it would still be free to resort to the provisions of paragraph 2 of Article XXIII for redress. The Sub-Group heard certain statements but reached no conclusion on this question. It was agreed, however, that the concurrence in a measure by the Organization would deprive a contracting party of any right of resorting to unilateral action to redress the balance. On the other hand, such a concurrence would not deprive a contracting party of its right to lodge a complaint under Article XXIII. Since the Organization, 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 existence of the provisions of Section C of Article XVIII, in these circumstances, it would appear difficult for the Organization to allow a contracting party to resort to the withdrawal of concessions or suspension of obligations under paragraph 2 of Article XXIII, unless the effect of the measure concurred in proved to be substantially different from what could reasonably have been foreseen at the time the Organization concurred in it.