

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/184

8 February 1955

Special Distribution

CONTRACTING PARTIES
Ninth Session

Review Working Party I on
Quantitative Restrictions

PROPOSED AMENDMENTS TO ARTICLE XVIII

Draft Report of Review Working Party I

1. In accordance with its terms of reference, the Working Party considered the various amendments which have been suggested to deal with the problem of restrictions and other deviations from the provisions of the General Agreement to enable contracting parties to grant governmental assistance to economic development. As a result of its discussions, the Working Party agreed to submit to the CONTRACTING PARTIES an amended text of Article XVIII as well as various notes to be inserted in the Annex to the Agreement containing interpretative notes and other regulations. Individual reservations to specific provisions of the text are inserted as footnotes in the Annex to this Report. It may be sufficient to record here that the South African representative made a formal reservation regarding the revised version of Article XVIII as a whole, and in particular with respect to the provisions of paragraph 17 which would permit a contracting party to introduce a measure inconsistent with the other provisions of the General Agreement without the approval or concurrence of the CONTRACTING PARTIES. The same representative proposed, in paragraph 21, the deletion of the words "the suspension of which the Organization does not disapprove, in order to make it clear that the action taken by a contracting party substantially affected to restore the balance of benefits should not be made dependent on prior approval of the CONTRACTING PARTIES. The Working Party felt that this amendment was unnecessary since the wording is taken from the present text of Article XIX and that it is clear, both from the text itself and from the practice followed so far by the CONTRACTING PARTIES, that the contracting party affected is not obliged to obtain prior approval from the CONTRACTING PARTIES and that the object of the phrase quoted is merely to indicate that the CONTRACTING PARTIES have a right to require adjustments in the action taken if they consider that the action goes beyond what is necessary to restore the balance of benefits. On the other hand, the representatives of Cuba, Brazil and the Dominican Republic entered a general reservation regarding the scope of the Preamble and of the Article in general. They considered that the provisions of Article XVIII should apply also to the maintenance of existing industries, in view of the competitive inequality of industries established in under-developed countries, and they reserved their position until they saw the results of the discussions of Sub-Group I-C which is considering the question of the use of quantitative restrictions for protective reasons. The Working Party was of the opinion that it might be useful to place on the record agreed statements which may facilitate the interpretation of the Article in the future, and which will throw light on the intention of the CONTRACTING PARTIES when they drafted the text.

2. Paragraphs 3, 6 and 13 of the new draft: The phrase "with a view to raising the general standard of living" has been used instead of the words "in order to raise the general standard of living" which is contained in earlier drafts. The Working Party felt that this more flexible form of words would cover the cases where the direct contribution which the establishment of a new industry was expected to make to the general standard of living of the country was not appreciable.
3. Paragraph 5: The review provided in paragraph 5 of Article XVIII is intended to provide an opportunity for discussing the effects of the measures applied under Sections C and D, the progress made by the industries in question and the general operation of these Sections. It is agreed that the Organization shall not withdraw its concurrence or modify the terms of a concurrence during the period of validity for which it has been given, or request the withdrawal or modification of a measure applied in full accordance with the terms of that concurrence.
4. Paragraphs 13 and 22: It is understood that any measure applied under Section C or D shall be for the purpose of contributing to the establishment of an industry which can be expected to make sufficient progress in the course of time to be able to exist without the need for the special measures permitted under those provisions.
5. Paragraph 14: It should be noted that any measure taken in accordance with the proviso of paragraph 14 should be only for the purpose specified therein and should not be a means of affording protection to the industry in question. The contracting party concerned should, therefore, refrain from irrevocable commitments of a long term nature before the expiry of the specified period so as to avoid difficulties in the event that it should decide, as a result of the consultation with the Organization, to modify or not to proceed with the proposed measure.
6. Paragraph 19: As indicated in the interpretative note to this paragraph, the resort to this provision is limited to the case of the establishment of a new industry or of a new branch of production and of the substantial transformation of an existing industry and, the measure has to be of the type defined in paragraph 13 of the Article. The provisions of paragraph 19 could therefore be invoked only when, through the existence of balance-of-payments import restrictions, the contracting party concerned would not have been in a position to assess the competitive position of the industry concerned before the end of the reasonable period of time referred to in paragraph 13 of this Article.¹
7. Paragraph 20: It is the intent of the provision in paragraph 20 relating to imports in "minimum commercial quantities" that in applying a measure under Sections C or D of Article XVIII, the contracting party concerned should avoid the complete exclusion of any product. It is recognized, however,

¹ Text to be considered by the Working Party.

that there might be circumstances where this would not be practicable, for instance when the minimum quantity that could be commercially shipped constitutes too high a proportion of the requirements of the domestic market.

8. Paragraph 21: As a point of interpretation, although it is understood that the concurrence of the Organization in a measure under paragraphs 16, 19 or 22. or the fact that the Organization, as envisaged in paragraph 15, has not requested a contracting party to consult, would not deprive a contracting party affected by the measure in question of its right to lodge a complaint under Article XXIII, 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 terms under which the benefit was obtained, including the provisions embodied in Article XVIII. It is therefore recognized that the Organization would not be in a position to allow a contracting party to resort to the withdrawal of concessions or suspension of obligations under paragraph 2 of Article XXIII, unless the effects of the measure concurred in proved to be substantially different from what could reasonably have been foreseen at the time the measure was considered by the Organization.

9. Interpretative Note ad paragraphs 13 and 14: It is recognized that the "reasonable period of time" referred to in the Interpretative Note ad paragraphs 13 and 14 should normally not exceed two years from the date on which the industry concerned started production.

ANNEX

TEXT OF THE PROPOSED REDRAFT OF ARTICLE XVIII
AS APPROVED BY THE WORKING PARTY

ARTICLE XVIII

Governmental Assistance to Economic Development

1. The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, and in particular of those economies which can only support low standards of living and are in the early stages of development.
2. They recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their population, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry and (b) to apply quantitative restrictions for balance-of-payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.¹
3. They recognize finally that with those additional facilities which are provided for in Sections A and B of this Article, the provisions of this Agreement would normally be sufficient to enable contracting parties to meet the requirements of their economic development. They agree, however, that there may be circumstances where no measure consistent with those provisions is practicable to permit a contracting party in the process of economic development to grant the governmental assistance required to promote the establishment of particular industries with a view to raising the general standard of living of its population. Special procedures are laid down in Sections C and D of this Article to deal with those cases.
4. (a) Consequently, a contracting party whose economy can only support low standards of living and is in the early stages of development shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article.

(b) A contracting party whose economy is in the process of development but which does not come within the definition of sub-paragraph (a) above, may make applications to the Organization under Section D of this Article.
5. The Organization shall review annually all measures applied pursuant to the provisions of Sections C and D of this Article.

¹ Reservation by the Brazilian, Cuban and Dominican Republic representatives.

Section A

.....

Section B

.....

Section C

6. If a contracting party coming within the definition set out in subparagraph (a) of paragraph 4 of this Article finds that governmental assistance is required to promote the establishment of a particular industry with a view to raising the general standard of living of its population, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.

7.. The contracting party concerned shall notify the Organization of the special difficulties which it meets in the achievement of the objective outlined in paragraph 5 above, and indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiry of the time-limit laid down in paragraph 8 or paragraph 10 below, as the case may be, or, if the measure affects imports of a product the rate of duty on which is bound under Article II of this Agreement, unless it has secured the concurrence of the Organization in accordance with the provisions of paragraph 11 below, provided that, if the industry receiving assistance has already started production, the contracting party concerned may, after informing the Organization, take such measure as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.

8. If, within thirty days of the notification of the measure, the Organization does not request the contracting party concerned to consult with it, that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.

9. If it is requested by the Organization to do so, the contracting party concerned shall consult with it as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the Organization agrees that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 6 above, and concurs in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.

10. If, within ninety days from the date of notification under paragraph 7 above, the Organization has not concurred in the proposed measure, the contracting party concerned may introduce the measure proposed after informing the Organization¹

11. If the proposed measure affects imports of a product the rate of duty on which is bound under Article II of this Agreement, the contracting party concerned shall enter into consultation with any other contracting party with which the rate of duty was initially negotiated, and with any other contracting parties which the Organization determines to have a substantial interest in the product. The Organization shall concur in the measure if it agrees that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 6 above and is satisfied

- (a) that agreement has been reached with the contracting parties interested in the product in question as a result of the consultation referred to above, or
- (b) if no such agreement has been reached within a period of sixty days after the notification referred to in paragraph 7 has been received by the Organization, that the contracting party concerned has made all reasonable effort to reach an agreement and that the interests of other contracting parties are adequately safeguarded.²

The contracting party concerned shall thereupon be released from its obligations under the relevant provisions of the other Articles of the Agreement to the extent necessary to apply that measure.

12. If a proposed measure of the type described in paragraph 6 above concerns an industry the establishment of which has in the initial period been facilitated by incidental protection afforded by restrictions imposed by that contracting party for balance-of-payments purposes under the relevant provisions of this Agreement, the contracting party concerned may resort to the provisions and procedures of this Section, provided that it shall not apply the proposed measure without the concurrence of the Organization.

13. Nothing in the foregoing paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. Further, the restrictions shall be so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; nor shall the restrictions be so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.

~~14.~~ At any time when a measure is being applied under paragraph 10 any other contracting party substantially affected by it may suspend the application to the trade of the contracting party concerned or such substantially equivalent

¹ Reservation by the South African Representative.

² Reservation by Brazilian, Cuban, South African and United States representatives pending the outcome of the discussions on Article XXVIII.

obligations or concessions under this Agreement the suspension of which the Organization does not disapprove, provided that sixty-days' notice of such suspension is given to the Organization not later than six months after the measure was introduced or changed substantially to the detriment of that contracting party. Any contracting party acting under this paragraph shall afford adequate opportunity for consultation in accordance with the provisions of Article XXII of this Agreement.¹

Section D

15. A contracting party coming within the scope of sub-paragraph (b) of paragraph 4 of this Article desiring, in the interest of the development of its economy, to take a specific measure of the type described in Section C of this Article in respect of the establishment of a particular industry may apply to the Organization for approval of such measure. The Organization shall promptly consult with the contracting party and shall, in making its decision, be guided by the considerations set out in paragraph 16 of this Article. If the Organization concurs in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure. If the proposed measure affects imports of a product the rate of duty on which is bound under Article II, the provisions of paragraph 11 above shall apply.²

16. Any measure applied under this Section shall comply with the provisions of paragraph 13 above.

TEXT TO BE INSERTED IN THE ANNEX TO THE AGREEMENT CONTAINING INTERPRETATIVE NOTES AND OTHER REGULATIONS

Ad Article XVIII

Paragraphs 1 and 4 .

1. It is agreed that when it considers whether the economy of a contracting party "can only support low standards of living", the Organization shall take into consideration the normal position of that economy and shall not base its determination on exceptional circumstances such as those which may result from the temporary existence of boom conditions for the staple export product or products of the contracting party concerned.³

¹ Reservation by the South African representative.

² Reservations by the Australian, Brazilian, Canadian and United States representatives with respect to the last sentence of the paragraph.
An alternative draft will be presented by the United States representative.

³ Text to be considered by the Working Party.

2. The phrase "in the early stages of development" is not meant to apply only to contracting parties which have just started their economic development, but also to contracting parties whose economies are undergoing a process of industrialization to correct an excessive dependence on primary production.

Paragraphs 3, 6, 13 and 22

The reference to the establishment of particular industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an existing industry and to the substantial transformation of an existing industry. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

Paragraph 9

The second sentence in paragraph 9 shall not be interpreted to mean that a contracting party is required to relax or remove such restrictions if that relaxation or removal would thereupon produce conditions justifying the intensification or institution, respectively, of restrictions under paragraph 7 of Article XVIII.

Paragraphs 11 and 15-16

It is understood that the Organization shall invite a contracting party introducing or maintaining restrictions under Section B, or proposing to apply a measure under Section C, to consult with it, pursuant to paragraph 11 or 16 as the case may be if it is requested to do so by a contracting party whose trade would be appreciably affected by the measure in question.

Paragraph 12

.....7

Paragraphs 13 and 14

It is recognized that before deciding on the introduction of a specific measure and notifying the Organization in accordance with paragraph 14, a contracting party may need a reasonable period of time to assess the competitive position of the industry concerned.

Paragraphs 16, 18, 19 and 22

Note 1: It is understood that the Organization may concur in a proposed measure subject to specific conditions or limitations. If the measure as applied does not conform to the terms of the concurrence it will to that extent be deemed a measure in which the Organization has not concurred. In cases in which the Organization has concurred in a measure

for a specified period, the contracting party concerned, if it finds that the maintenance of the measure for a further period of time is required to achieve the objective for which the measure was originally taken, may apply to the Organization for an extension of that period in accordance with the provisions and procedures of Section C or D, as the case may be.

Note 2: It is expected that the Organization will, as a rule, refrain from concurring in a measure which is likely to cause serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 18: The phrase "that the interests of other contracting parties are adequately safeguarded" is meant to provide sufficient latitude to the Organization to consider in each case what is the appropriate method to safeguard those interests. This safeguard may for instance take the form of an additional concession to be applied by the applicant contracting party during such time as the deviation from the other articles of the Agreement would remain in force or the temporary suspension by contracting parties affected of a concession or obligation substantially equivalent to the impairment due to the introduction of the measure in question.¹

Paragraph 19: The provisions of paragraph 19 are intended to cover the cases where an industry has been in existence beyond the "reasonable period of time" referred to in the Interpretative Note ad paragraph 14, and should not be so construed as to deprive a contracting party of its right to resort to the other provisions of Section C including paragraph 17, with regard to a newly established industry even though it has benefited from incidental protection afforded by balance-of-payments import restrictions.

Paragraph 21: Any measure taken pursuant to the provisions of paragraph 21 shall be withdrawn forthwith if the action taken in accordance with paragraph 17 is withdrawn or if the Organization concurs in the measure proposed after the expiry of the ninety-day time limit specified in paragraph 17.

¹ Text to be considered by the Working Party.

