

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/14

11 August 1987

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on GATT Articles

ARTICLES XII, XIV, XV AND XVIII

Background paper by the Secretariat

Introduction

1. The present paper, prepared at the request of the Negotiating Group on GATT Articles, covers Articles XII, XIV, XV and XVIII. It describes the main provisions of these Articles and relevant decisions covering their scope and application, as well as the procedures laid down and points that have arisen in the course of their operation.

2. Section A of the paper reviews those elements of the four Articles which together constitute the balance-of-payments provisions of the General Agreement. However, Articles XV and XVIII also include other important elements. Article XV is concerned with exchange arrangements in general, and thus with the relationships between trade and monetary measures, and especially between GATT and the International Monetary Fund. Article XVIII, on governmental assistance to economic development, contains some of the key provisions defining the special status and rights under GATT of developing contracting parties. Its scope extends well beyond the balance-of-payments provisions of Article XVIII:B, to provide developing countries with additional flexibility in the use of protective or other measures for economic development purposes. These other aspects of Articles XV and XVIII are discussed in Sections B and C.

3. The provisions and procedures of Articles XII and XVIII have been broadened by two texts agreed in the Tokyo Round: the Declaration on Trade Measures Taken for Balance-of-Payments Purposes and the Decision on Safeguard Action for Development Purposes (BISD 26S/205 and 209). This paper also takes these modifications into account.

A. The Balance-of-Payments Provisions of the General Agreement:
Articles XII, XVIII:B, XIV and XV

4. The main provisions of the General Agreement relating to import-restrictive measures taken for balance-of-payments purposes are contained in Articles XII and XVIII:B, which are accordingly analyzed first in this paper. Articles XIV and XV, which have a direct bearing on the examination in GATT of such measures, are dealt with in later sections.

5. Articles XII and XVIII:B were put into their present form in October 1957, following the overall review of the General Agreement undertaken in 1955. The main discussion of the review of these provisions is contained in the report of the Working Party on Quantitative Restrictions (BISD 3S/170-185). Articles XII and XVIII:B have been amplified by detailed consultation procedures introduced in 1970 (BISD 18S), by "simplified" consultation procedures for developing countries introduced in 1972 (BISD 20S) and by provisions on the application of the Articles and consultation procedures laid down in the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205), which extend the GATT examination of the balance-of-payments provisions from quantitative restrictions alone to all trade measures taken for balance-of-payments purposes. Minor amendments of Article XIV, proposed as a result of the 1955 overall review, took effect in October 1957 and February 1961. No mention was made of Article XIV in the 1979 Declaration. Article XV remains essentially in its original 1947 form; its application as regards the rôle of the IMF in balance-of-payments consultations is, like that of Articles XII and XVIII:B, defined more fully in the procedures for full and simplified consultations set out in BISD 18S and 20S respectively.

I. Basic objectives of the balance-of-payments provisions

(i) Article XII

6. Article XII of the General Agreement provides contracting parties with a permitted deviation from the provisions of Article XI concerning the prohibition of quantitative restrictions (paragraph 1). It lays down criteria for the level of restrictions to be applied (paragraph 2(a)), and specifies conditions for the time period of their application and for their progressive relaxation and elimination "when conditions would no longer justify their institution or maintenance" (paragraph 2(b)). It also establishes an essential link between trade measures for balance-of-payments reasons and domestic policies (paragraph 3(a)); however, this is modified by recognition in paragraph 3(d) that domestic policy aimed at full employment may give rise to a high level of demand for imports and that therefore contracting parties shall not be required to withdraw or modify restrictions "on the ground that a change in these policies would render unnecessary restrictions which it is applying under this Article". Paragraph 3 also contains conditions governing the incidence of restrictions on products which are seen as more or less essential, and provisions aimed at avoiding damage to the commercial interests of another contracting party for the importation of minimum commercial quantities of imports, and relating to patents, trade marks, copyright and samples.

7. The clear aim of Article XII is to distinguish temporary measures taken for balance-of-payments purposes from quantitative restrictions applied for protective reasons, and to discourage the use of the former for

the latter purpose. However, a proposal made in the 1955 Working Party to require contracting parties applying restrictions under Article XII to minimize the "incidental protective effect" of the restrictions, was not considered necessary as the Working Party was of the view that this had been adequately covered by other provisions of Paragraph 3 (BISD 3S/171, paragraph 5).

8. Article XII, paragraph 4 sets out the basic provisions for annual consultations by countries applying balance-of-payments restrictions. Such consultations cover the nature of balance-of-payments difficulties, alternative corrective measures which may be available, the possible effect of the restrictions on the economies of other contracting parties, and any special external factors adversely affecting the export trade of the contracting party applying restrictions (3S/173, paragraph 12: Interpretative Note to Article XII).

9. Paragraph 5 of Article XII provides that "If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade", the CONTRACTING PARTIES shall consider whether other measures might be taken, by deficit by countries whose balances of payments are under pressure or are exceptionally favourable, or by appropriate intergovernmental organizations. These provisions have never been used.

(ii) Article XVIII:B

10. The provisions of Article XVIII:B, as revised in 1955, should be seen in the light of the discussion in the Working Party on Quantitative Restrictions concerning governmental assistance to economic development (BISD 3S/179-189). The Working Party felt that "provisions dealing with all aspects of the problem, including the maintenance of quantitative restrictions for balance-of-payments reasons" should be focused in Article XVIII. The Working Party's philosophy is reflected in paragraphs 2 and 3 of the introductory section of the Article:

"The contracting parties 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 people, 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.

The contracting parties 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 measures 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 people. Special procedures are laid down in Sections C and D of this Article to deal with those cases."

11. In reaching these conclusions, the Working Party began from the premise that for developing countries, "balance-of-payments difficulties will tend to be generated by development itself" (BISD 3S/183, paragraph 44). Article XVIII thus recognizes that developing contracting parties "tend to experience balance-of-payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade" (paragraph 8). The criteria for introducing balance-of-payments restrictions (paragraph 9) are broadly the same as those contained in Article XII. However, in paragraph 9(a), the word "imminent", in relation to a threat of a serious decline in reserves, was not felt appropriate because "the reserve problem for these countries is one of the adequacy of the reserves in relation to their programme of economic development" (idem). The Working Party noted that "in order to safeguard their external position these countries may need over a period of time to control the general level of their imports" in order to prevent that level from rising "beyond the means available to pay for imports as the progress of development programmes creates new demands" (idem). Consultations on such measures were to be held every two years "in view of the practical difficulties which those countries may have in preparing the necessary documentation and in sending experts to attend those consultations" (3S/184, paragraph 46), or when import measures were intensified. (See also paragraphs 51 and 52 below.)

12. Article XVIII:B contains similar provisions to those of Article XII in respect of the incidence of quantitative restrictions (paragraph 10), the relationship with domestic policies, and the progressive relaxation of restrictions (paragraph 11).

13. In respect of external factors, while no specific provisions exist in Article XVIII comparable to those in paragraph 4(e) of Article XII, the Working Party agreed "that the scope of consultations under paragraph 12 of Article XVIII was the same as that of consultations under Article XII and that the clarification contained in paragraph 4(e) of Article XII and in the related interpretative note would apply equally to consultations undertaken under Section B of Article XVIII" (BISD 3S/184, paragraph 49).

Actions inconsistent with Articles XII and XVIII:B

14. Articles XII:4 and XVIII:12 provide for appropriate recommendations and actions by the CONTRACTING PARTIES in the event that restrictions are applied in a manner involving minor or serious inconsistencies with the provisions of the Articles or of Article XIII (non-discrimination). In the case of inconsistencies of a serious nature involving damage to the trade of a contracting party, the CONTRACTING PARTIES may, following consultations and recommendations, finally release an affected contracting party from "such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances" (XII:4(d) and XVIII:12(d)). Article XVIII goes on to permit a less-developed contracting party against which such action is taken, and which finds that its programme of economic development is adversely affected thereby, to withdraw from the General Agreement. To date, these provisions have not been used.

(iii) Article XIV

15. Article XIV permits a contracting party which is invoking Article XII or XVIII:B to apply quantitative restrictions discriminatorily under certain circumstances. These circumstances were envisaged in the light of immediate post-war economic conditions and institutional arrangements, when the currencies of many developed countries were inconvertible. Since 1961, no contracting party has notified the CONTRACTING PARTIES that it is availing itself of the provisions of Article XIV. However, Article XIV:1 may still have relevance as a means of avoiding any legal inconsistency between the IMF and GATT disciplines over the discriminatory use of restrictions.

16. The circumstances foreseen in Article XIV that could justify the use of discriminatory quantitative restrictions are defined in:

(a) Paragraphs 1 and 5(a)

17. These provisions permit discriminatory restrictions of "equivalent effect" to restrictions on payments and transfers for current international transactions applied and approved (or which the Fund is prepared to state could have been applied and would have been approved) under Articles VII:3(b), VIII or XIV of the Articles of Agreement of the IMF, or under analogous provisions of a special exchange agreement (see paragraphs 57-60 below) entered into under Article XV:6 of the General Agreement.

18. Article VII:3(b), the only explicit indication in the IMF's Articles of when the discriminatory application of exchange restrictions or currency practices might be justified, applies only when the IMF has designated a currency as "scarce". As this has never happened, this justification for discriminatory quantitative restrictions under GATT Article XIV:5(a) has never been available to any contracting party.

19. Articles VIII and XIV of the IMF are not explicit about what circumstances might justify the discriminatory application of restrictions, and consequently neither is Article XIV:1 of the General Agreement beyond the fact that the restrictions must be for balance-of-payments purposes. The Fund does not make information publicly available on whether countries have been authorized to use discriminatory exchange restrictions or currency practices under Article XIV of the IMF, or on whether they have used them under Article VIII of the IMF subsequent to their becoming member countries. Article XIV of the General Agreement does not call on the CONTRACTING PARTIES to inform themselves of the IMF's decisions in this regard unless a contracting party applies discriminatory quantitative restrictions. Even then, in the view of the 1955 Working Party on Quantitative Restrictions, Article XIV:1 of the GATT permits that country to apply discriminatory quantitative restrictions having equivalent effect, provided the country has already received IMF approval to use discriminatory exchange restrictions or currency practices, or the IMF has stated that it would have authorized corresponding restrictions if the country had chosen to use them rather than import restrictions. Ad Article XIV, paragraph 1 notes that, the nature, effects and reasons for discrimination in import restrictions can be examined in Balance-of-Payments Committee consultations;

(b) Paragraph 2

20. This allows temporary discriminatory application of quantitative restrictions in respect of a small part of a contracting party's trade when this would confer benefits that substantially outweigh any injury caused to the trade of other contracting parties. One of the situations contemplated 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 Article XIV, paragraph 2);

(i) Paragraph 5(b)

21. This exception, allowing discriminatory restrictions in connection with certain preferential arrangements provided for in Annex A of the General Agreement, appears to be wholly a dead letter. The arrangements essentially concerned certain imports of meat into the United Kingdom, and no longer exist.

22. Article XIV:3 provides for the now-exceptional case of territories having a common quota in the IMF by permitting them, in applying restrictions under Article XII or XVIII:B, to discriminate against imports from other countries but not against those from one another. Article XIV:4 states that a contracting party shall not be precluded from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use.

(iv) Article XV¹

23. With the exception of its paragraphs 6, 7 and 8, which are discussed in section B of this paper, all the provisions of Article XV have a direct bearing on the treatment of balance-of-payments problems in the GATT. The basic purpose of the Article is to respond to the evident interlinkages and substitutability between measures taken in the trade and monetary field, by providing for cooperation between the CONTRACTING PARTIES and the International Monetary Fund in order that they "may pursue a coordinated 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 (XV:1). Contracting parties "shall not, by exchange action, frustrate the intent of [the GATT] nor, by trade action, the intent of the provisions of the Articles of Agreement of the IMF" (XV:4). 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 in the GATT for quantitative restrictions, they shall report thereon to the Fund (XV:5). However, "nothing in this Agreement shall preclude" the use of exchange controls consistent with IMF rules or the use of trade controls to make these effective (XV:9(a) and (b)).

24. In all cases of consideration of balance-of-payments questions, the CONTRACTING PARTIES are required to "consult fully" with the IMF. They are required to accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments and the Fund's determination as to whether exchange action by a contracting party is in accordance with the IMF Articles VIII or XIV. Moreover, the CONTRACTING PARTIES shall accept the Fund's determination as to "serious decline" "very low level", or "reasonable rate of increase" in monetary reserves, (XV:2).

25. The 1955 review session agreed that "paragraph 9(a) was not to be interpreted so as to preclude the CONTRACTING PARTIES from discussing with a contracting party the effects on the trade of contracting parties of exchange controls or restrictions imposed or maintained by that contracting party, or from reporting on these matters to the IMF (as was specifically envisaged in paragraph 5 of the Article" (3S/198, paragraph 8). The IMF Executive Directors, by contrast, decided in 1960 that, for the purposes of Article VIII of the Fund Agreement, the criterion for distinguishing between trade and exchange measures should normally be the technique used (see Analytical Index, XV-7). Exchange restrictions have been discussed in the Balance-of-Payments Committee (e.g. the Italian deposit requirement for purchases of foreign currency - C/M/149 and BOP/R/119). Despite the

¹ See also section B.

Italian view that the rules applying to trade measures did not apply to such monetary measures, the Council agreed to refer the question to the Balance-of-Payments Committee. Many delegations expressed concern about the trade effects of the measure. The Committee noted that "the deposit scheme, though monetary in form, had some effect on trade and that, in so far as these trade effects were concerned, the scheme could be considered in the spirit" of the 1979 Declaration (BOP/R/119, paragraph 17). No reference was made to Article XV. Many developing countries regulate payments for import through exchange control measures or by a combination of exchange and trade measures. Such measures have not generally been discussed in the Committee. In one case (Yugoslavia, 1981), the Committee noted that import licensing and restrictions did not serve balance-of-payments purposes, which were achieved through the allocation of foreign exchange. It requested further information - which was provided - but no further follow-up was made.

(v) The 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205)

26. This Declaration, adopted by the CONTRACTING PARTIES at the end of the Tokyo Round, expands the scope of balance-of-payments consultations from quantitative restrictions only to "all" import-restrictive measures taken for balance-of-payments purposes, and clarifies provisions relating to notification, consultation procedures, and the membership of the Committee on Balance-of-Payments Restrictions. In drawing up the Declaration, the CONTRACTING PARTIES established a certain number of principles which had not been previously spelled out:

- (a) that restrictive trade measures "are in general an inefficient means to maintain or restore balance-of-payments equilibrium";
- (b) that restrictive import measures taken for balance-of-payments purposes "should not be taken for the purpose of protecting a particular industry or sector" and that contracting parties should "endeavour to avoid that [such measures] stimulate new investments that would not be economically viable in the absence of the measures";
- (c) that the less-developed contracting parties "must take into account their individual development, financial and trade situation" when implementing such measures, and that the impact of trade measures taken by developed countries on the economies of developing countries can be serious;
- (d) that developed contracting parties "should avoid the imposition of restrictive trade measures for balance-of-payments purposes to the maximum extent possible".

27. The Declaration introduces three new conditions for application of balance-of-payments measures, i.e. that preference shall be given to the measure which has "the least disruptive effect on trade" while abiding by

disciplines provided for in the GATT; that the simultaneous application of more than one trade measure for balance-of-payments purposes shall be avoided; and that whenever practicable, contracting parties shall publicly announce a time schedule for the removal of the measures. In addition, developed contracting parties undertake to take into account the export interests of developing countries if they do apply balance-of-payments trade measures, and are permitted to exempt from such measures products of export interest of less-developed contracting parties.

28. The other provisions of the 1979 Declaration are referred to in the following paragraphs, as relevant.

II. Conditions and use of balance-of-payments provisions as currently applied

(i) Coverage of Articles XII and XVIII:B

29. All restrictive import measures taken for balance-of-payments purposes are subject to examination under Article XII or Article XVIII:B, i.e. to consultation in the Balance-of-Payments Committee (1979: 1 and 4). Before 1979 only quantitative restrictions were subject to such examination.

30. The extension of balance-of-payments consultations to "all" measures resulted from the use of generalized import surcharges or deposit schemes by a number of countries in the 1960s and 1970s for balance-of-payments purposes. Such measures are not strictly justifiable under the letter of Articles XII or XVIII:B, but had nevertheless been defended as being less disruptive to trade than the quantitative restrictions which Articles XII and XVIII:B envisage. Some cases (where the countries concerned were not invoking balance-of-payments provisions with regard to quantitative restrictions) were dealt with by ad hoc Working Parties established by the Council. In other cases, where balance-of-payments considerations were being invoked and the contracting parties were already in consultation, the surcharges or deposit schemes were considered in parallel with the normal balance-of-payments consultations, at the request of the Council. In its review of its work in the period 1970-1974, the Committee reported to the Council in July 1975 that "Although the Committee has followed a pragmatic approach in this respect, there has been no formal adaptation of its terms of reference to established practice" (L/4200, Section II).

31. Consultations held in the ad hoc working parties followed a very similar pattern to the Committee's consultations. Many of the countries subject to such ad hoc consultations either invoked Article XII to justify the measures or sought to assimilate the measures in effect to those permitted under Article XII. Consultations were held with the IMF, whose views on the measures strongly influenced the working parties' conclusions.

32. The consultations on surcharges held in the Balance-of-Payments Committee in parallel with "normal" consultations resulted in two instances

in the extension of waivers of bindings for the charges applied by the countries concerned (Turkey and Uruguay) as requested by the Council. In other cases the Committee either discussed the surcharges in general terms, or assimilated them in effect to quantitative restrictions applied for balance-of-payments reasons, "thus dispensing with the formalities of a waiver" (L/4200, paragraph 31). The Committee's conclusions over this period normally focussed on the question of whether the surcharges met the General Agreement's criteria for balance-of-payments-related import restrictions (see L/4200, paragraph 40).

33. Consultations concerning import deposit schemes in the same period resulted in relatively vague conclusions, often following the IMF's judgement on whether import restrictions were in keeping with the balance-of-payments situation. One reason for this may have been that the question of whether a deposit requirement affecting bound items was contrary to Article II (see L/4200, paragraph 43) was not resolved until a panel² ruled in 1978 that such a requirement had to be treated in the same way as a surcharge.

34. These developments, which were reflected in the Committee's five-year review of its work made in 1975 (L/4200), were taken up in the discussion of the Tokyo Round "Framework" provisions relating to balance-of-payments, which laid down additional procedures for the Committee in the 1979 Declaration. In formal legal terms surcharges and deposits are still not explicitly recognized as measures that may be used under the terms of Articles XII and XVIII:B. However, the preamble and initial paragraphs of the 1979 Declaration give implicit recognition to the use of such measures, and in practice their substitution for quantitative restrictions by contracting parties invoking these Articles has passed unchallenged since 1979.

(ii) Notification requirements

35. Any "introduction or intensification" of measures taken for balance-of-payments purposes is to be promptly notified to the GATT. Reverse notifications may be made by any contracting party with has reason to believe that a restrictive import measure applied by another contracting party is taken for balance-of-payments reasons. The GATT Secretariat may also be asked to seek information on a measure and make it available to contracting parties (1979:3).

²[Report of Panel on EEC Programme of Minimum Import Prices, Licences and Surety Deposits for Certain Processed Fruits and Vegetables, BISD 25S paragraphs 4.15 and 4.16.]

36. Reverse notification, or asking the Secretariat to seek information, has recently been used in a number of cases (e.g. Nigeria (1982); Uruguay (1982); Nigeria did invoke Article XVIII:B, Uruguay did not; Zaire (1982); Colombia, Argentina (1984); Greece (1986)). On the basis of the Quantitative Restrictions Group documentation, the Secretariat was able in 1985 to identify Cameroun, Guyana, Côte d'Ivoire, Mauritius, Thailand and Zimbabwe as claiming XVIII:B as relevant to their quantitative restrictions. All such measures taken by Mauritius were liberalized; Côte d'Ivoire was in process of replacing quotas by import surcharges; Thailand's measures were identified as for infant industry rather than balance-of-payments reasons. No further replies have been received to requests for information.

(iii) Criteria for invocation of balance-of-payments provisions

37. A contracting party may invoke balance-of-payments restrictions "in order to safeguard its external financial position and its balance of payments" (XII:1); "in order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development" (XVIII:9). The wording inside the quotes was, when originally proposed in the Havana Charter discussions, intended to "eliminate the risk that the provision could be interpreted to mean that import restrictions were not 'necessary' (and therefore were not permitted) until every other possible corrective measure (such as exchange controls, exchange depreciation, etc.) had been tried and found inadequate". It was also stated that the Organization had the right during the course of consultation with the Members fully to discuss and recommend alternative action which a Member might take to meet its difficulties (Analytical Index, XII-3). In the 1979 Declaration, by contrast, the CONTRACTING PARTIES stated that they were "convinced that restrictive trade measures are in general an inefficient means to maintain or restore balance-of-payments equilibrium".

(iv) Nature and level of restrictions

38. A contracting party may "restrict the quantity or value of merchandise permitted to be imported" (XII:1); "control the general level of its imports by restricting" (XVIII:9). The incidence of restrictions on imports of different products or classes of products may, however, be determined in such a way as to give priority to the importation of [those products which are more essential (XII:3(b))]; [those products which are more essential in the light of its policy of economic development (XVIII:10)]. (See Analytical Index, p. XII-9. In the Havana Charter discussions this was taken to mean that imports of consumer goods could be restricted in order to give priority to capital goods.)

39. Import restrictions shall not exceed those necessary "to forestall the [imminent threat of (XII:2(a)(i))], [threat of (XVIII:9(a))], or to stop a serious decline in its monetary reserves, or, in the case of a contracting party with [very low (XII:2(a)(ii))] [inadequate (XVIII:9(b))] monetary

reserves, to achieve a reasonable rate of increase in these reserves". The distinction between "imminent threat" and "threat" was intended to give extra flexibility to developing countries in relation to the adequacy of reserves in relation to their programme of economic development (3S/183, paragraph 44).

40. In applying restrictive measures, contracting parties shall abide by the disciplines provided for in the GATT and give preference to the measure which has the least disruptive effect on trade. (1979:1(a).) The simultaneous application of more than one type of trade measure for this purpose shall be avoided (1979:1(b)).

41. Contracting parties applying balance-of-payments restrictions also undertake to avoid unnecessary damage to the commercial or economic interests of any other contracting party, including endeavouring to avoid causing serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent (ad Article XII); not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and not to apply restrictions which would prevent the importation of commercial samples or prevent compliance with patent, trade mark, copyright or similar procedures. (XII:3(c) and XVIII:10.)

42. The 1951 Report on "The Use of Quantitative Import Restrictions to Safeguard Balances of Payments" (Analytical Index pages XII-9, XII-10) contained a discussion of the avoidance of "undesirable incidental protective effects". Some of these considerations have been brought forward into the 1979 Declaration, which emphasizes that balance-of-payments restrictions should not be taken to protect particular industries or sectors, nor to stimulate new investments that would not be economically viable in the absence of the measures (1979: Preamble). For the Havana Charter discussion of "Minimum commercial quantities", see Analytical Index XII-11. The aim was to "make it just worthwhile for an exporter to keep his sales organization together in the overseas market". Priority was to be given to imports of spare parts. Implicitly, this provision could outlaw import prohibitions.

(v) Duration and phasing out of restrictions

43. Contracting parties applying balance-of-payments restrictions "shall progressively relax them as conditions improve" (XII:2(b) and XVIII:11), maintaining them only to the extent that the circumstances of Article XII:2(a) or Article XVIII:9 require their maintenance. They shall eliminate them when conditions no longer justify such maintenance. Wherever possible, contracting parties shall publicly announce a time schedule for the removal of the measures (1979:1(c)). Most countries acting under Article XII have phased out import restrictions within relatively short timetables. By contrast, many of the countries acting under Article XVIII:B have maintained balance-of-payments measures in force

for a considerable number of years. The Annex lists the contracting parties which have consulted under Articles XII and XVIII since 1979. So long as new restrictions have not been introduced, or other considerations entered into account, the Committee has, since 1972, normally reviewed such cases under the simplified procedures (see paragraphs 51 and 52 below).

(vi) Relationship to domestic policies

44. Contracting parties undertake, in carrying out domestic policies, to pay due regard to the need for [maintaining or] restoring equilibrium in balance of payments on a sound and lasting basis and to the desirability of [avoiding an uneconomic] [assuring an economic] employment of productive resources. (XII:3(a), XVIII:11) An essential link is thus created between balance-of-payments policy and domestic policy. This is carried forward into the consultation procedures where the Committee examines "Alternative measures to restore equilibrium".

45. The contracting parties "recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2(a) of this Article" (XII:3(d)). The contracting parties "recognize that contracting parties [the economies of which can only support low standards of living and are in the early stages of development] tend, when they are in rapid process of development, to experience balance-of-payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade" (XVIII:8). No contracting party shall be "required to withdraw or modify restrictions on the ground that a change in [those policies] [its development policy] would render unnecessary the restrictions which it is applying under this [Article] [Section]" (XII:3(d); XVIII:11). The Havana Charter Geneva discussion took the line that a country "cannot be obliged to withdraw [restrictions] on the grounds that if [it] adopted a policy of deflation ... [it] would no longer be in difficulties". The Havana text notes that a country "may find that demands for foreign exchange on account of imports or other current payments ... exercise pressure on its monetary reserves which would justify balance-of-payments restrictions". The intention was apparently to inhibit the CONTRACTING PARTIES from criticizing too strongly domestic policies pursued by consulting countries. It must, however, be borne in mind that this was done in a period when exchange rate and other adjustment policies had neither the flexibility nor the recognition of their importance that they have today.

III. External factors

46. In proceeding under Article XII:4 (and Article XVIII:12 - see BISD 3S/173, paragraph 12, and 184, paragraph 49), the CONTRACTING PARTIES shall

have due regard to any special external factors adversely affecting the export trade of the contracting party applying restrictions (XII:4(e)). This paragraph "does not add any new criteria for the imposition or maintenance of quantitative restrictions for balance-of-payments reasons. It is solely intended to ensure that all external factors such as changes in the terms of trade, quantitative restrictions, excessive tariffs and subsidies, which may be contributing to the balance-of-payments difficulties of the contracting party applying restrictions, will be fully taken into account" (Ad Article XII:4(e)). The 1955 Working Party agreed that "the scope of consultations under Paragraph 12 of Article XVIII was the same as that under Article XII and that the clarification contained in paragraph 4(e) of Article XII and in the related interpretative note would apply equally to consultations undertaken under Section B of Article XVIII (BISD3S/124, paragraph 49). Further, in drawing up the full consultation procedures in 1970, it was agreed that "account should be taken of all factors, both internal and external, which affect the balance-of-payments position of the consulting country" (18S/49, paragraph 2). In consultations on balance-of-payments problems of developing countries, "particular attention should be given to the possibilities for alleviating and correcting these problems through measures that contracting parties might take to facilitate an expansion of the export earnings of these countries" (18S/49, paragraph 3). This is repeated in the 1979 Declaration, paragraph 12.

IV. Procedures for consultations

47. "Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this [Article] [Section] shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance-of-payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties" (XII:4(a), XVIII:12(a)). The Havana Charter gave priority to prior consultations but this was not carried forward into the General Agreement. In 1984, Chile made proposals in the GATT Council regarding the use of prior consultations as a preventive mechanism against the use of import restrictions for balance-of-payments reasons and focussing on obstacles to expansion of trade. A report by the Chairman of the Committee to the Council noted that there was nothing to prevent prior consultations being held and that such (full) consultations would take account of all factors affecting the country's balance-of-payments (C/132). However, no cases have occurred. It was recognized that if prior consultations were to take place, one of the major questions would be the maintenance of confidentiality.

48. Contracting parties applying restrictions under Article XII shall enter into annual consultations (XII:4(b)): those applying restrictions

under Article XVIII:B shall enter into consultations "at intervals of approximately, but not less than, two years according to a programme to be drawn up by the CONTRACTING PARTIES" (XII:4(b); XVIII:12(b)).

(i) Full consultations

49. Consultations under Articles XII:4(a) and XVIII:12(a) under full consultation procedures (18S/48) cover the nature of balance-of-payments difficulties, alternative corrective measures which may be available, systems and methods of restrictions, and the possible effect of the restrictions on the economies of other contracting parties. The detailed plan of discussion contained in BISD 18S/52, was intended to fulfil these objectives. It covers four main topics: the balance-of-payments position and prospects, alternative measures to restore equilibrium, system and methods of the restrictions, and the effects of the restrictions. The 1979 Declaration introduced two new elements: (a) the relationship of the consulting country's measures to other countries' restrictions or their effect on export interests of a developing country (paragraph 11) and (b) the possibilities for alleviating the balance-of-payments problem through measures by other contracting parties to facilitate export expansion of the consulting country (paragraph 12).

50. The Committee on Balance-of-Payments Restrictions reports in detail on full consultations. The basic document is supplied by the consulting contracting party; since 1979, a background paper has been provided by the Secretariat; and a "Recent Economic Developments" report is submitted by the IMF. To fulfil the provisions of Article XV, paragraph 2, the IMF participates actively in the consultations by making an official statement concerning the economic and financial situation of the consulting contracting party.

(ii) Simplified consultations under Article XVIII:B

51. A move towards simplified consultations for developing countries came in October 1971 when, in discussing arrangements for consultations, the then Chairman of the Committee noted that only seven of the fifteen consultations scheduled for 1971 had been carried out. In spite of ample notice given to governments, some had requested postponement, sometimes at the last minute. He suggested that the Council of the CONTRACTING PARTIES might consider procedural changes to facilitate the Committee's operations (C/M/73). The text published in BISD 20S for "simplified" regular consultation procedures with developing countries resulted from this request.

52. In simplified consultations, the Committee is called upon only to recommend to the Council whether full consultations are desirable (20S/48 paragraph 3(c)). It makes this recommendation on the basis of a written "statement" by the country concerned, a background paper by the

Secretariat and the "Recent Economic Developments" document supplied by the IMF. The Fund does not participate actively in the consultations. Since 1972, the practice of the Committee has been to review developing countries' measures under simplified procedures unless some particular factor such as the introduction of new restrictions indicates that full consultations should be held. The 1979 Declaration introduced five non-exclusive criteria for the decision to hold full consultations (paragraph 8):

- (a) the time elapsed since the last full consultations;
- (b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;
- (c) the changes in the overall level or nature of the trade measures taken for balance-of-payments purposes;
- (d) the changes in the balance-of-payments situation and prospects;
- (e) whether the balance-of-payments are structural or temporary in nature.

(iii) Discussion of consultation procedures

53. The subject matter of full consultations, referred to above, has generally been grouped into two headings covering:

- (a) balance-of-payments position and prospects, alternative measures to restore equilibrium;
- (b) system and methods of the restrictions, effects of the restrictions.

The focus of discussion in the Committee has tended to be placed on the first parts of these two headings, while the questions of "alternative measures" and of the effects of the restrictions have been relatively lightly treated, presumably because of the weight given to the provisos to Articles XII and XVIII concerning changes in domestic policies. In 1986 the Chairman of the Committee, in an informal paper, noted that the detailed plan had in practice been telescoped and that a good deal of substance could have been overlooked. He proposed a revised plan for full consultations which was intended to ensure adequate consideration of all relevant elements, including the question of "alternative measures to restore equilibrium". He suggested that more emphasis could be given to the internal and external factors causing balance-of-payments difficulties, the domestic adjustment policies undertaken by the consulting country, the effects of the measures taken on production and trade (including protective effects of measures maintained for a period of time) and the prospects for the balance of trade and payments, including any factors relevant to paragraph 12 of the 1979 Declaration. In relation to simplified

consultations it was proposed that factual questions in clarification of measures taken or policies pursued by the consulting country might be submitted in advance through the Secretariat and circulated to members of the Committee. The need for an oral statement by the consulting country might then be avoided. These proposals are still under discussion in the Committee.

54. In relation to external factors, an attempt was made to put flesh on the ideas put forward in paragraphs 11 and 12 of the 1979 Declaration in a statement circulated by the Chairman of the Committee in 1983/84 (C/125). It was suggested that in full consultations, developing countries should indicate how such measures to "alleviate and correct" trade problems affecting the balance-of-payments might be taken. To date, four consulting countries (Brazil, Korea, Argentina and Colombia) have used this provision.

V. Rôle of the International Monetary Fund in Balance-of-Payments Consultations

55. Consultations between the GATT and the IMF take place in the Balance-of-Payments Committee "prior to the GATT consultations" (18S/51, paragraph 8), through a statement delivered by the IMF representative, which is approved by the Fund's Executive Board. Such a statement is only made in full consultations. The Fund also supplies material for the consultations through "Recent Economic Development" papers resulting from IMF missions to consulting countries: these are circulated to members of the Balance-of-Payments Committee as soon as possible after they are received (18S/51, paragraph 9).

56. Before the introduction of simplified procedures in 1972, the IMF was formally consulted and made a statement in every consultation. This was dispensed with under the simplified consultations whose objective is simply to assess whether, for any reason, the Committee sees it as desirable to hold a full consultation. In addition, up to 1977 (BOP/R/94), the Fund normally provided as part of its documentation for both full and simplified consultations the Executive Board's Decision (EBD) on the status of a consulting country's exchange measures. In most cases this was either quoted in or annexed to the report of the consultations. The practice of supplying EBD papers ceased after 1977, since when the "Recent Economic Developments" paper has been the only background document supplied by the Fund for balance-of-payments consultations. In earlier consultations, the conclusions of the IMF statements, which were also frequently cited or at least borne in mind in the Committee's own conclusions, normally included a judgement on whether the level of restrictions were within the bounds necessary to stop a serious decline in the country's monetary reserves or contain a deterioration of the balance-of-payments. At present, Fund statements for balance-of-payments consultations focus largely on the adjustment, financial and monetary policies being pursued by the consulting country. The Fund never mentions the conditions attached to its lending to consulting countries, even where these include conditions related to trade

policy. Occasionally a consulting country will do so. The rarity of full consultations under Article XVIII:B has meant that since 1979 the Fund has made statements to the Committee on only ten consulting countries: Greece (1980, 1981, 1986), Argentina (1986), Brazil (1981, 1983), Colombia (1985), Ghana (1983), Israel (1980, 1982, 1984, 1985), Korea (1984), Nigeria (1984), Philippines (1980, 1986) and Yugoslavia (1981).

B. Article XV

57. Article XV, "Exchange Arrangements", is almost identical to the corresponding Article 24 of the Havana Charter, which bore the more explicit title of "Relationship with the International Monetary Fund and Exchange Arrangements". Paragraphs 15-19 above refer to the basic objectives of the Article as they affect the consideration of balance-of-payments questions in GATT, and paragraphs 43-44 discuss the rôle of the International Monetary Fund in balance-of-payments consultations. (A more detailed note on GATT's relationship with the Fund is in MTN.GNG/NG14/W/6, paragraphs 16-23). In addition, however, Article XV includes three paragraphs to meet the situation of a contracting party which is not a member of Fund.

58. Paragraph 6 of Article XV requires that a contracting party which is not a Fund member must within a stipulated period (fixed by a 1949 Resolution at a maximum of four months after accession to GATT) either join the Fund or enter into a special exchange arrangement with the CONTRACTING PARTIES, which becomes part of that government's GATT obligations. Similarly, a contracting party which withdraws from the Fund must forthwith enter into a special exchange agreement with the contracting parties. The aim of such an agreement is to "provide to the satisfaction of the CONTRACTING PARTIES that the objectives of [the GATT] will not be frustrated as a result of action in exchange matters by the contracting party in question" (XV:7(a)). The obligations imposed in exchange matters on the contracting party by any such agreement are not to be generally more restrictive than those imposed by the IMF's Articles on Fund members (XV:7(b)). Contracting parties which are not Fund members are to furnish such information within the general scope of the Fund's Article VIII:5 as the CONTRACTING PARTIES may require in order to carry out their functions under the GATT (XV:8). (Section 5 of Article VIII authorizes the Fund to require its members to provide national data on gold and foreign exchange holdings, exports and imports, balance-of-payments, international investment, national income, prices, exchange rates, exchange controls, etc.).

59. The text of a model special exchange arrangement was adopted by the CONTRACTING PARTIES on 20 June 1949 (BISD Vol.II/115-123). Special exchange arrangements were accepted during the period 1950-52 by four contracting parties. However, all four subsequently became Fund members. Four more contracting parties have been granted waivers since 1955 under paragraph 5 of Article XXV relieving them of the obligation to become a

Fund member or to accept a special exchange arrangement. Two of the countries concerned are now Fund members, but the other two - Cuba and Czechoslovakia - are still covered by the waivers. Both waivers are on the basis that the countries concerned will act in accordance with the principles of the special exchange agreement adopted in June 1949 and with the intent of the General Agreement (13S/23 and 6S/28). Four other contracting parties (Switzerland, Poland, Romania and Hungary) entered reservations as regards paragraph 6 of Article XV in their protocols of accession to the General Agreement. These reservations were in each case accompanied by undertakings that so long as the country concerned is not a Fund member "it will act in exchange matters in accordance with the intent of the General Agreement and in a manner fully consistent with the principles laid down in the text of the special exchange agreement as adopted by the CONTRACTING PARTIES in their Resolution of 20 June 1949". Of the four, only Switzerland is still not a member of the Fund.

60. The present situation is therefore that no special exchange arrangements in the terms of Article XV:6 and 7 are currently in force, but that three contracting parties which are not Fund members have accepted that their actions in exchange matters will be consistent with the principles of the model arrangement drawn up in June 1949.

C. Article XVIII: SECTIONS A, C AND D

Basic objectives

61. Article XVIII is intended to provide developing countries with additional flexibility under the GATT in the use of protective or other measures for economic development purposes. Section A of the Article enables a developing country to modify or withdraw concessions included in its Schedule. Section B has been dealt with under the first part of this paper concerning the Balance-of-Payments provisions of the GATT. Sections C and D contain provisions enabling countries eligible under these sections to impose measures otherwise inconsistent with the General Agreement such as quantitative restrictions.

62. The Article is based on recognition by the contracting parties that the attainment of the objectives of the General Agreement would be facilitated by the progressive development of their economies, particularly of the less-developed contracting parties (paragraph 1 of the Article). It is further recognized, in paragraph 2 of the Article, "that in order to implement programmes and policies of economic development designed to raise the general standard of living of their people", less-developed contracting parties might need 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 the General Agreement. Less-developed contracting parties therefore "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". Finally, it is recognized that with those additional facilities which are provided for in Sections A and B respectively, the provisions of the General Agreement would normally be sufficient to enable contracting parties to meet the requirements of their economic development. However, in 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 people" (paragraph 3) special provisions are laid down in Sections C and D, which enable countries eligible under these sections to impose quantitative restrictions otherwise inconsistent with the General Agreement in order to promote the establishment of a particular industry.

63. As indicated in Section A of this paper Article XVIII in its present form entered into force in October 1957 as a result of the overall review of the General Agreement undertaken in 1955. The Report of the Working Party on Quantitative Restrictions (1955) which reviewed the Article and proposed its current provisions states that it was considered appropriate to insert in Article XVIII provisions dealing with all the aspects of the problem of governmental assistance to economic development, including the maintenance of quantitative restrictions for balance-of-payments reasons. The Working Party believed that "the new text represents a new and more positive approach to the problem of economic development and to the ways and means of reconciling the requirements of economic development with the obligations undertaken under the General Agreement regarding the conduct of commercial policy." The flexibility provided under this Article to less developed contracting parties for taking action on economic development grounds without infringing their obligations under the GATT is accompanied by the provision that any other contracting party affected by such action would also be free to take such measures as may be necessary to restore the balance of benefits. The Working Party considered that such a provision would have "an important restraining influence since, before taking action, the government concerned would have to weigh carefully the advantages and disadvantages of unilateral action". (BISD 3S/79-180)

Provisions, procedures and use of Article XVIII: A, C and D

Country eligibility

64. Sections A and C of Article XVIII, like Section B, can be invoked by those contracting parties the economies of which can only support "low standards of living" and are in the "early stages of development" (paragraph 4(a)). Section D is available to contracting parties the economies of which "are in the process of development, but which does not come within the scope of sub-paragraph (a)" (paragraph 4(b)).

Circumstances under which Sections A, C and D may be invoked

65. Contracting parties eligible under Sections A and C can take measures pursuant to the provisions of these sections in order to promote "the establishment of a particular industry"³ with the view to raising the general standard of living" of their people. Countries eligible under Section D can impose measures similar to those provided for under Section C for the establishment of a particular industry.

Section A

66. This Section allows a less-developed contracting party to renegotiate bindings immediately after notification to the CONTRACTING PARTIES.

67. Procedures provide for negotiations with holders of initial negotiating rights and contracting parties having a substantial interest. If agreement is reached the concession can be modified or withdrawn provided that the country concerned gives effect to any compensatory adjustment involved in the agreement. In case that agreement is not reached the country concerned may refer the matter to the CONTRACTING PARTIES. If the CONTRACTING PARTIES find that the country concerned has made every effort to reach an agreement and the compensation offered is adequate the measure may be introduced. If the CONTRACTING PARTIES do not consider the compensation adequate but find that the country concerned had made every reasonable effort to offer adequate compensation, the measure may be also introduced. However, in such a situation affected countries could modify or withdraw substantially equivalent concessions initially negotiated with the country concerned.

68. Section A has been invoked by the following contracting parties: Sri Lanka (twice in 1955 and once in 1956, and 1957), Greece (1956, 1965), Benelux (for Suriname in 1958), Republic of Korea (1968). In December 1983, Indonesia notified certain import regulations taken under Article XVIII: A and C as well as the 1979 Decision on Safeguard Action for Development Purposes (see below) in respect of imports of foods, beverages and fruits (L/5597).

Section C

69. A country eligible under this Section can impose measures, e.g. quantitative restrictions, whether or not these affect a bound item, in situations where "no measure consistent with the other provisions of the General Agreement is practicable" (paragraph 13). However, Section C does not authorize any deviation from the provisions of Articles I, III and XIII

³Reference to "industry" could be read, unless otherwise stated, as referring also to a branch of agriculture (BISD Vol.II/64).

of the General Agreement. Moreover, "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 the time to be able to exist without the need for the special measures permitted under those provisions" (BISD 3S/186).

70. Procedures require that the country concerned should notify the CONTRACTING PARTIES of its special difficulties and the specific measures which it proposes to introduce in order to remedy these difficulties. Section C procedures are different depending on whether or not the measure proposed affects a bound item. In 1958 the CONTRACTING PARTIES approved an indicative Questionnaire concerning information to accompany notifications under Section C.

71. If the proposed measure does not affect a bound item and the CONTRACTING PARTIES do not request the country concerned, within thirty days of the notification, to consult with them that country is free to apply the proposed measure. If consultations are requested, the country concerned should consult with the CONTRACTING PARTIES as to the purpose of the measure, alternative measures that might be available under the GATT and the possible effect of the measure on trade of other contracting parties. In the event that the CONTRACTING PARTIES concur in the measure, the country concerned may apply the measure and affected contracting parties cannot take retaliatory actions. If within ninety days after notification, the CONTRACTING PARTIES have not concurred in the measure, the country concerned may apply it but substantially affected contracting parties may suspend substantially equivalent concessions or other obligations provided that the CONTRACTING PARTIES do not disapprove such suspensions.

72. Procedures in case of measures which affect bound items stipulate that the country concerned should enter into consultations with holders of initial negotiating rights and countries having a substantial interest. Concurrence by the CONTRACTING PARTIES is needed for introducing the measure. The CONTRACTING PARTIES may concur if they agree that no measure consistent with other GATT provisions was practicable and they are satisfied that agreement has been reached as a result of consultations held. In the absence of such an agreement, within sixty days after notification of the measure, the CONTRACTING PARTIES may concur in the measure if they find that the country concerned has made every reasonable effort to reach an agreement and that the interests of other contracting parties are adequately safeguarded. The country concerned may be released from its obligations under other relevant provisions of the GATT to the extent necessary to enable it to apply the measure if consultations have been held and the CONTRACTING PARTIES have concurred in the measure.

73. Section C also contains a provision (paragraph 19) permitting protection for an industry in the case that such industry had previously enjoyed incidental protection through restrictions for balance-of-payments

purposes, provided that the measure will not be applied without the concurrence of the CONTRACTING PARTIES.

74. It may be noted that the question of whether and to what extent the concurrence by the CONTRACTING PARTIES in a measure proposed under Article XVIII:C would affect the right of a contracting party to resort to Article XXIII was dealt with in the Report of the Working Party on Quantitative Restrictions (1955). The Working Party agreed that although no contracting party affected by a measure taken under Article XVIII:C would be deprived of its right to have recourse to Article XXIII, "the CONTRACTING PARTIES, 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 CONTRACTING PARTIES 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 CONTRACTING PARTIES". (BISD 3S/188)

75. The CONTRACTING PARTIES granted releases under Section C to India (1949), Cuba (1949, 1955, 1960), Haiti (1950) and Sri Lanka (1949, 1952, 1955, 1956, 1957, 1958, 1959, 1960, 1964). Some other contracting parties, including Greece (1970), Indonesia (1983) and Malaysia (1984), notified certain import regulations taken for development purposes under Section C.

The 1979 Decision on Safeguard Action for Development Purposes
(BISD 26S/209)

76. During the Tokyo Round the provisions of Article XVIII:A, B and C were examined in the Group "Framework". In the course of the work of this Group the proposals made by developing countries with a view to improving the provisions of Article XVIII:A and C aimed at: ensuring greater flexibility in the kind of action they could take; definition of more equitable criteria and circumstances under which a developed country could take retaliatory action; greater flexibility under Section A for recomposing their schedules of concessions; allowance for phased compensation for modifications or withdrawals of concessions; greater flexibility under Section C enabling developing countries to take action in relation to their exports (and not just their imports); and criteria for ensuring that retaliatory actions by developed countries do not damage the economy of a developing country.

77. The 1979 Decision on Safeguard Action for Development Purposes, adopted in the Tokyo Round, has widened the scope of Article XVIII, Sections A and C by allowing developing countries to modify/withdraw concessions or impose quantitative restrictions not only for the purpose of establishing a particular industry, but also "for the development of new or

the modification or extension of existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development". The Decision also enables developing countries to modify/withdraw concessions or introduce quantitative restrictions on a provisional basis immediately after notification in case of "unusual circumstances, where delay in the application of measures may give rise to difficulties in the application of its programmes and policies of economic development".

Section D

78. This Section was intended to enable countries which were in the process of development but which did not qualify for the criteria spelled out in paragraph 4(a) of Article XVIII to introduce quantitative restrictions in order to assist in the establishment of a particular industry. The report of the Working Party on Quantitative Restrictions (1955) specifies that "the clause in paragraph 4(b) reading "whose economy is in the process of development" should not be construed as a legal limitation on the eligibility of countries to submit applications under Section D, but as a general indication of the type of economy whose need that Section is intended to meet" (EISD 3S/196).

79. Procedures under Section D are the same as those of Section C, but all the measures without exception have to be concurred in by the CONTRACTING PARTIES before they can be introduced.

80. Section D has not been invoked.

Reviewing arrangements

81. Article XVIII provides for annual reviews by the CONTRACTING PARTIES of all measures applied pursuant to provisions of Sections C and D of the Article. In accordance with this provision the CONTRACTING PARTIES carried out seven annual reviews of measures applied under Section C (BISD 7S/71, 8S/97, 9S/101, 10S/106, 11S/158, 13S/65, 14S/127, 15S/65). The last annual review took place in 1967. It was noted that the release granted to Sri Lanka in 1964 was no longer necessary and that no other contracting party was applying measures under Section C.

82. The 1979 Decision on Safeguard Action for Development Purposes stipulates that "the CONTRACTING PARTIES shall review this Decision in the light of experience with its operation, with a view to determining whether it should be extended, modified or discontinued". There has been no such review to date.

BALANCE-OF-PAYMENTS CONSULTATIONS SINCE INTRODUCTION OF 1979 DECLARATION

Country	1980	1981	1982	1983	1984	1985	1986	1987	1988
Argentina							<u>F</u> (159)		[S]
Bangladesh	S(116)		S(128)		S(147)		S(161)		[S]
Brazil	S(116)	F(124)		<u>F</u> (135) ¹		S(157)		F	
Colombia						<u>F</u> (156)		S(166)	
Egypt		S(117)		S(133)		S(157)		F	
Ghana	S(116)		S(128)	<u>F</u> (136)		S(157)		S	
Greece	F(114)	F(123)			<u>E</u>		<u>F</u> (160)	<u>E</u>	
Hungary				F(131)	<u>F</u> (141)	<u>E</u>			
India	S(112)		S(126)		S(143)		S(163)	F	
Israel	F(113)		F(129)		F(142)	<u>F</u> (155)		F	
Italy		F(119)	<u>E</u>						
Korea		S(117)		S(133)	<u>F</u> (146)		S(163)	F	
Nigeria					<u>F</u> (139)		S(163)		[S]
Pakistan	S(112)		S(126)			S(150)		S	
Peru		S(120)		S(137)			S(161)	F	
Philippines	F(115)		S(128)		S(147)		<u>F</u> (164)		[S]
Portugal	F(111)	F(118)	F(125)	F(134)	F(145)	F(152)	<u>E</u>		
Sri Lanka		S(117)		S(133)		S(153)		S	
Tunisia		S(121)		S(137)		S(157)			S
Turkey		S(120)		S(137)		S(153)		S(166)	F
Yugoslavia		S(117) <u>F</u> (122)			S(143)		S(163)		[S]

¹See also BOP/R/130 (report on "Other Business" of 3 December 1982)

Key: F = Full consultation

F = Last full consultation

S = Simplified consultation

E = Measures eliminated

Numbers in brackets are BOP/R/ report references.

* * * * *

COUNTRIES CONSULTING UNDER ARTICLE XVIII:BDate of last full consultation

Argentina	1986	Nigeria	1984
Bangladesh	none	Pakistan	1978
Brazil ¹	1983	Peru ¹	1975
Colombia	1985	Philippines	1986
Egypt ¹	1970	Sri Lanka	1971
Ghana ¹	1983	Tunisia	1979
India ¹	1978	Turkey ¹	1979
Korea ¹	1984	Yugoslavia	1981

¹Full consultations scheduled for 1987 or 1988.