

## ARTICLE XII

### RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

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- (i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party;\*

contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(*e*)

UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS

8. Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as "simplified consultation procedures") in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether full consultation procedures should be used will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of least-developed country Members, no more than two successive consultations may be held under simplified consultation procedures.

*Notification and Documentation*

9. A Member shall notify to the General Council the introduction of or any changes in the application of restrictive import measures taken for balance-of-payments purposes, as well as any modifications in time-schedules for the removal of such measures as announced under paragraph 1. Significant changes shall be notified to the General Council prior to or not later than 30 days after their announcement. On a yearly basis, each Member shall make available to the Secretariat a consolidated notification, including all changes in laws, regulations, policy statements or public notices, for examination by Members. Notifications shall include full information, as far as possible, at the tariff-line level, on the type of measures applied, the criteria used for their administration, product coverage and trade flows affected.

10. At the request of any Member, notifications may be reviewed by the Committee. Such reviews would be limited to the clarification of specific issues raised by a notification or examination of whether a consultation under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII is required. Members which have reasons to believe that a restrictive import measure applied by another Member was taken for balance-of-payments purposes may bring the matter to the attention of the Committee. The Chairman of the Committee shall request information on the measure and make it available to all Members. Without prejudice to the right of any member of the Committee to seek appropriate clarifications in the course of consultations, questions may be submitted in advance for consideration by the consulting Member.

11. The consulting Member shall prepare a Basic Document for the consultations which, in addition to any other information considered to be relevant, should include: (a) an overview of the balance-of-payments situation and prospects, including a consideration of the internal and external factors having a bearing on the balance-of-payments situation and the domestic policy measures taken in order to restore equilibrium on a sound and lasting basis; (b) a full description of the restrictions applied for balance-of-payments purposes, their legal basis and steps taken to reduce incidental protective effects; (c) measures taken since the last consultation to liberalize import restrictions, in the light of the conclusions of the Committee; (d) a plan for the elimination and progressive relaxation of remaining restrictions. References may be made, when relevant, to the information provided in other notifications or reports made to the WTO. Under simplified consultation procedures, the consulting Member shall submit a written statement containing essential information on the elements covered by the Basic Document.

12. The Secretariat shall, with a view to facilitating the consultations in the Committee, prepare a factual background paper dealing with the different aspects of the plan for consultations. In the case of developing country Members, the Secretariat document shall include relevant background and analytical material on the incidence of the external trading environment on the balance-of-payments situation and prospects of the consulting Member. The technical assistance services of the Secretariat shall, at the request of a developing country Member, assist in preparing the documentation for the consultations.

*Conclusions of Balance-of-Payments Consultations*

13. The Committee shall report on its consultations to the General

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## II. INTERPRETATION AND APPLICATION OF ARTICLE XII

### A. SCOPE AND APPLICATION OF ARTICLE XII

#### 1. General

The present text of Articles XII and XVIII was agreed in the 1954-55 Review Session, and entered into effect in October 1957. The principal source concerning the drafting of these provisions is the Report of the Review Working Party on "Quantitative Restrictions"<sup>2</sup>. This Report notes generally concerning Article XII:

"After a detailed consideration of the various proposals put forward with a view to establishing stricter rules for the introduction and maintenance of quantitative restrictions through the institution of fixed time-limits and approval by the CONTRACTING PARTIES, the Working Party came to the conclusion that such

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"Most members of the Sub-Group could not accept the interpretation of the Six of paragraph 5(a). In their view the use of the term 'regulations' in this paragraph and in paragraph 8(a)(ii) does not include quantitative restrictions imposed for balance-of-payments reasons ... the term 'regulation' does not occur in



periods, before and after the adoption of the Declaration. In this connection see also the provisions of the Understanding on the Balance-of-Payment Provisions of the GATT 1994.

(a) *Treatment of import surcharges prior to 1979*

The 1979 Declaration reflected the use of import surcharges and import deposit schemes for balance-of-payments purposes in the fifteen years preceding, as well as the practice developed by the Committee on Balance-of-Payments Restrictions and discussed below. In 1964, the Committee on Legal and Institutional Framework, which prepared the text of Part IV of the General Agreement, had also recommended an amendment to Section B of Article XVIII to permit a less-developed contracting party to use temporary import surcharges, in place of quantitative restrictions, to safeguard its balance of payments.<sup>8</sup> This Recommendation had been referred to the Committee on Trade and Development which debated the question in an Ad Hoc Group on Legal Amendments during 1965-1966, and agreed to defer consideration of the issue indefinitely.<sup>9</sup>

In a review of its work in the 1970-74 period, the Committee on Balance-of-Payments Restrictions reported to the Council in 1975 that:

"Surcharges appear to have been applied in twenty-four cases, involving twenty-three contracting parties. The Balance-of-Payments Committee discussed, examined or generally dealt with ten of these cases. In two cases only did it recommend a waiver - Uruguay and Turkey. Both these cases involved extensions of waivers granted originally in 1961 and 1963, making it difficult for the Committee to depart from established practice. In two other cases - Israel and Yugoslavia - the Committee adopted a new approach by assimilating the surcharge to quantitative restrictions applied for balance-of-payments reasons, thus dispensing with the formalities of a waiver. In the other six cases, the surcharges were discussed, not always in detail, in the course of the consultations. It is not within the Committee's terms of reference to recommend a waiver unless it has been assigned the task by the Council. There seems to be a trend on the part of Committee members towards adopting gradually a more flexible approach, rather than emphasize the legal requirements of GATT.

"Of the twenty-four different surcharges, five cases were dealt with in other GATT bodies (Denmark, India, Indonesia, Pakistan and United States); three of which resulting in waivers. Further, nine cases were not brought to the attention of contracting parties."<sup>10</sup>

"In the case of import surcharges on bound items, the decision to be taken, according to the General Agreement, is whether or not to grant a waiver (Article XXV:5). In examining import surcharges, the Committee's main concern has never been the question of whether or not it should recommend to the CONTRACTING PARTIES the validation of the measure through a waiver. The Committee's conclusions have focused instead on the question of whether the surcharges meet the criteria set forth in the General Agreement for import restrictions. A typical example is the 1970 consultation on the Yugoslav special import charge. Here the Committee decided to recommend to the Council to take note of the surcharge on the understanding 'that all the conditions and criteria embodied in the appropriate provisions of the General Agreement concerning the use of quantitative restrictions for balance-of-payments reasons should be deemed applicable in respect of this import charge'. A similar approach was adopted in three other cases (1971 Israel; 1974 Israel; 1974 Yugoslavia). The Committee's decisions assimilating surcharges to the procedures and criteria for import restrictions were adopted unanimously. In the 1971 Israel consultation, however, the representative of Japan asked to have his view recorded in the conclusions that the case should

"The procedural assimilation of surcharges to import restrictions by the Committee does not, of course, change the rights of contracting parties affected by surcharges. The Committee, in some of its conclusions on surcharges re-affirmed the rights of affected countries by stating that the decision to take note by the Council would in no way preclude recourse to the appropriate provisions of the General Agreement by any contracting party which considered that any benefits accruing to it under Article II of the Agreement in respect of any bound item were nullified or impaired as a consequence of the surcharge."<sup>11</sup>

In 1964 the United Kingdom gave notice of its decision to impose a temporary import surcharge in order to safeguard the external financial position of the United Kingdom and its balance of payments; the United Kingdom invoked the provisions of Article XII as justification while recognizing that "the type of restriction on imports there envisaged was the use of quantitative restrictions". The Council, while "bearing in mind that Article XII envisaged that any necessary restraint on imports would be by way of quantitative restrictions", appointed a Working Party of which the terms of reference were identical to those stated in Article XII:4(a), with the addition: "as to the nature of the measures taken".<sup>12</sup>

lodging of the additional security associated with the minimum import price for tomato concentrates were inconsistent with the obligations of the Community under Article II:1(b).<sup>16</sup>

On the relevance of this Panel finding for the consideration in the Committee on Balance-of-Payments Restrictions of whether import deposit requirements are "charges" in terms of Article II:1(b), see, for example, the 1980 consultations with Israel<sup>17</sup> and the 1981 consultation with Italy on the Italian deposit requirement for purchases of foreign currency.<sup>18</sup>

Concerning the treatment of import deposit schemes prior to 1978, the Balance-of-Payments Committee reported to the Council in its review of its work in 1970-74 that:

"Seventeen different import deposit requirements appear to have been applied involving sixteen contracting parties. The Balance-of-Payments Committee discussed or examined seven different cases. The Committee has generally referred to the measures in its conclusions, though without giving much emphasis; it has either noted or welcomed reduction of rates, or hoped or called for early phase-out or removal. In three cases the import deposits were discussed in the course of the consultations but not mentioned in the conclusions (Argentina, Korea and Uruguay).

"Three cases of import deposits were examined in other GATT bodies - United Kingdom, Italy and Iceland, none of which were invoking Article XII at the time, but all of which invoked balance-of-payments reasons.

"Seven cases were not notified to GATT and were not discussed in GATT bodies".<sup>19</sup>

"... the CONTRACTING PARTIES have not decided whether a deposit requirement in respect of bound items is a 'charge ... imposed on or in connection with importation' or, more generally, a 'treatment ... less favourable than that provided for in the appropriate ... Schedule', and therefore contrary to Article II.

(c) *Practice since 1979*

On 28 November 1979 the CONTRACTING PARTIES adopted the Declaration on "Trade Measures taken for Balance-of-Payments Purposes"<sup>25</sup>

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Paragraphs 2 and 3 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provide as follows:

“Members confirm their commitment to give preference to those measures which have the least disruptive effect on trade. Such measures (referred to in this Understanding as ‘price-based measures’) shall be understood to include import surcharges, import deposit requirements or other equivalent trade measures with an impact on the price of imported goods. It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied by a Member in excess of the duties inscribed in the Schedule of that Member. Furthermore, that Member shall indicate the amount by which the price-based measure exceeds the bound duty clearly and separately under the



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undertake to avoid unnecessary damage to the commercial and economic interests of any other contracting party".<sup>37</sup>

In the "Uruguayan Recourse to Article XXIII" in 1962, the complaint of Uruguay included, *inter alia*, balance-of-payments measures maintained by Denmark, Finland, and Japan. In each instance, the Panel Report noted that "the Panel would recall the view of contracting parties, as expressed in the consultations under

- "(c) administering balance-of-payment restrictions on a flexible basis and adjusting them to changing circumstances, thereby impressing upon the protected industries the impermanent character of the protection afforded by the restrictions;
- "(d) allowing the importation of 'token' amounts of products, which otherwise would be excluded on balance-of-payment grounds, in order to expose domestic producers of like commodities to at least some foreign competition and to keep such producers constantly aware of the need ultimately to be prepared to meet foreign competition;
- "(e) avoiding, as far as balance-of-payment and technical considerations permit, the allocation of quotas among supplying countries in favour of general licences unrestricted in amount or unallocated quotas applying non-discriminatorily to as many countries as possible; and
- "(f) avoiding as far as possible narrow classifications and restrictive definitions of products eligible to enter under any given quota."<sup>41</sup>

"... the Working Party noted that there was evidence of a number of types of misuse of import restrictions, in particular:



The provisions of this Code appear *in extenso* under Article XIII:3.

See also the provisions of the 1979 Declaration on "Trade Measures Taken for Balance-of-Payments Purposes" above at page 366 and paragraphs 1-4 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994.

(b) *"to avoid unnecessary damage to the commercial or economic interests of any other contracting party"*

See the Interpretative Note to paragraph 3(c)(i).

The 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes also provides that "If, notwithstanding the principles of this Declaration, a developed contracting party is compelled to apply restrictive import measures for balance-of-payments purposes, it shall, in determining the incidence of its measures, take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties".<sup>44</sup>

In the Fifth Session in 1950, Belgium reported that it had carried out consultations under Article XXIII, and had reached a satisfactory resolution, concerning quantitative restrictions applied by the United Kingdom and France for protectionist purposes and which, in the view of the Belgian Government, were unnecessarily causing damage to the Belgian economy.<sup>45</sup>

c) *"description of goods"*

During discussions at the Geneva session of the Preparatory Committee, it was stated that "whether you mean fountain pens as a class or each brand of fountain pen ... you certainly do not mean the importation of one particular kind".<sup>46</sup>

(d) *"minimum commercial quantities"*

During discussions at the Geneva session of the Preparatory Committee, it was stated that "the object ... is to keep open the channels of trade, to make it just worthwhile for the exporter to keep his sales organization together in the overseas market".<sup>47</sup> Although it was recognized that the phrase was open to a wide interpretation, it was stressed as being a matter of common sense on which Members in good faith ought not to disagree very seriously. It was agreed in these discussions to record the statement that "there should be an understood priority for the importation of spare parts, because in prohibiting the importation of spare parts into a country, you are making it impossible for other countries to export machinery".<sup>48</sup>

See also the reference above to "token" imports.

**(4) Paragraph 3(d): causes of balance-of-payments problems and their relationship with full employment**

(a) *Relationship to paragraph 3(a)*

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

"... As regards the redraft of paragraph 3(d), the Working Party wishes to place on record that the provisions of that sub-paragraph should be interpreted, *inter alia*, in the light of the undertaking set forth in sub-paragraph 3(a)."<sup>49</sup>

<sup>44</sup>L/4904, adopted on 28 November 1979, 26S/205, 206, para. 2.

<sup>45</sup>GATT/CP.5/SR.25 p. 3.

<sup>46</sup>EPCT/A/PV/28, p. 19.

<sup>47</sup>EPCT/A/PV/28, p. 10.

<sup>48</sup>EPCT/A/PV/41, p. 28.

<sup>49</sup>L/332/Rev.I and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 171, para. 5.

During the Fifth Session it was proposed to amend the General Agreement to add Articles 3, 4, and 6 of the Havana Charter Chapter II on employment and economic activity; however, this suggestion did not gain general support.<sup>50</sup> At the 1954-55 Review Session it was proposed to include in the General Agreement an article

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paragraph may be achieved either by increasing the restrictive effect of the restrictions applied to products the import of which is already limited, or by the institution of new restrictions on products the import of which was not yet subject to limitations."<sup>54</sup>

Paragraph 6 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides as follows:

"Sub-paragraph (c)(ii) deals with cases where the CONTRACTING PARTIES find serious inconsistencies

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The Resolution of 17 November 1956 on "Particular Difficulties Connected with Trade in Primary Commodities" provides, *inter alia*, that:

"the [CONTRACTING PARTIES] shall in the course of consultations undertaken under Article XII and ... under Article XVIII:B, take account of problems relating to international commodity trade among other difficulties which may be contributing to the disequilibrium of the balance of payments and compelling certain contracting parties to maintain import restrictions".<sup>64</sup>

See also the material on "expanded" consultations at page 389 below. See also the discussion under Article XVIII:5.

**6. Paragraph 5: "persistent and widespread application of import restrictions ... indicating the existence of a general disequilibrium"**

Paragraph 5 was incorporated into the text during the London session of the Preparatory Committee; its source was a United Kingdom proposal.<sup>65</sup>

"In the discussion of this matter in the Working Party a number of contracting parties stressed the desirability of providing for continuous co-operation and consultation between the GATT and the International Monetary Fund with a view to keeping the world economic situation under constant review and to enabling action to be concerted in good time to prevent any serious disequilibrium in world trade and payments from developing ...".<sup>68</sup>

See also the material under Article XIV:5(a).

#### **A. RELATIONSHIP BETWEEN ARTICLE XII AND OTHER ARTICLES**

##### **1. Articles I and XIII**

The Reports of the Working Parties on "United Kingdom Temporary Import Charges"<sup>69</sup> and "United States Temporary Import Surcharge"<sup>70</sup> each note the arguments of developing countries in favour of exempting from the surcharge products of developing countries or products of which developing countries were the principal supplier. These Reports also note the arguments in response that special exemption of imports by origin would produce

**Comparison of the provisions of Article XII and Article XVIII:B**

Art. XII      Art. XVIII:B

"In clear language this means that actions should be taken on a most-favoured-nation basis or, pursuant to the provisions of Part IV of the General Agreement (particularly Article XXXVII) and the 1979 Decision on Differential and More Favourable, Treatment, Reciprocity and Fuller Participation of Developing Countries, in a manner consistent with that decision, including special treatment for the least-developed among the developing countries. It was noted that Paragraph 2(c) of the Decision allows for the possibility of more favourable treatment to be accorded among developing contracting parties. ...

"In view of the consensus to respect multilateral principles in responding to the needs of countries experiencing severe balance-of-payments difficulties, the possibility of focusing trade actions on such countries would depend on the choice of products for which a particular country is a principal or substantial supplier to a particular market, or on the choice of specific measures which would particularly benefit that

country, it being understood that the implementation of each particular measure would be consistent with the multilateral principles referred to".<sup>76</sup>

## 2. Article XVIII

The table above presents a simplified comparison of the provisions of Article XII and Article XVIII:B.

In a few instances consultations have been conducted concerning balance-of-payments measures without reference to either Article XII or Article XVIII.<sup>77</sup> In another instance a contracting party has consulted concerning the same measures under Article XVIII:B and subsequently under Article XII.<sup>78</sup>

In the 1958 Working Party Report on "Consultations and Review Regarding Balance-of-Payments Restrictions", the Working Party "noted the recommendation of the Chairman of the CONTRACTING PARTIES that it be placed on record that twelve of the contracting parties applying balance-of-payments import restrictions at present fulfil the requirements of Article XVIII:4 and that



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developing contracting parties. In response the Director-General pointed out that members of the Committee were designated by the Council, which had never refused an application for membership.<sup>82</sup>

The 1979 "Declaration on Trade Measures Taken for Balance-of-Payments Purposes" (referred to below



ARTICLE XII - RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTSTICLE

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#### 4. Consultations

##### *(1) Timing of balance-of-payments consultations*

Sub-paragraph (a) of Articles XII:4 and XVIII:12 provides that “Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under [Article XII or Article XVIII:B respectively] 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”.

Article XII:4(b) provides that “contracting parties applying import restrictions under this Article shall enter into consultations of the type provided for in sub-paragraph (a) of this paragraph with the CONTRACTING PARTIES annually.” Article XVIII:12(b) provides that “contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in sub-paragraph (a) of this paragraph with the CONTRACTING PARTIES

not postpone the trade policy review by more than 12 months".<sup>103</sup> The schedule for balance-of-payments consultations is regularly circulated to the Council each January.<sup>104</sup>

At the March 1993 Council meeting, the Chairman of the Committee on Balance-of-Payments Restrictions announced that in view of the frequent postponements of balance-of-payments consultations experienced in recent years, the Committee had decided that this matter should be subject to greater discipline. Accordingly, the Committee had decided that if in future, a consulting country wished to request postponement of its consultation, the request should be submitted to the Committee and that the consultation could only be postponed with the consent of the Committee.<sup>105</sup>

Paragraphs 6 and 7 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provide as follows:

"A Member applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures shall enter into consultations with the Committee within four months of the adoption of such measures. The Member adopting such measures may request that a consultation be held under paragraph 4(a) of Article



"A less-developed contracting party may at any time request full consultations".<sup>110</sup>

A 1988 Note by the Secretariat on "Consultations Held in the Committee on Balance-of-Payments Restrictions under Articles XII and XVIII:B since 1975" states that in the period 1975 through June 1988, there had been 106 consultations under Article XVIII:B, of which 77 had taken the simplified form. In 17 of these, the Committee had, in its report on a simplified consultation, recommended full consultations. Before 1979, the reason for such a recommendation was not indicated; since that date it had always done so.<sup>111</sup>

Paragraph 8 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides as follows:

"Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47-49, referred to in this Understanding as 'simplified consultation procedures') in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether full consultation procedures should be used will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of least-developed country Members, no more than two successive consultations may be held under simplified consultation procedures."

**(3) *Documentation used in consultations***



- “(e) State trading, or government monopoly, used as a measure to restrict imports for balance-of-payments reasons.

Secretariat on "Consultations Held in the Committee on Balance-of-Payments Restrictions under Articles XII and XVIII:B since 1975".<sup>115</sup>

*(5) Secrecy*

The Note *Ad* Article XII provides that "The CONTRACTING PARTIES shall make provision for the utmost secrecy in the conduct of any consultation under the provisions of this Article." The Note *Ad* Article XVIII provides that "The CONTRACTING PARTIES and the parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article".

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Concerning Committee practice regarding the content of discussions, see the 1988 Note by the Secretariat on "Consultations Held in the Committee on Balance-of-Payments Restrictions under Articles XII and XVIII:B since 1975".<sup>121</sup>

*(a) External trade factors relating to the balance of payments*

Article XII:4(e) refers to "special external factors adversely affecting the export trade of the contracting party applying restrictions". The Report of the Review Working Party on "Quantitative Restrictions" notes that

1984 Statement by the Chairman of the Committee on Balance-of-Payments Restrictions to the Council summarized the result of these discussions.<sup>126</sup> The Chairman stated, *inter alia*, that:

“In discussing the legal framework for consideration of external factors, there appeared to be no need for a new or extended mandate to enable the Balance-of-Payments Committee to take into account the trading

consultations held on this proposal with members of the Committee and interested contracting parties. The report provides:

"After some discussion, it was recognized that in view of the text and drafting history of Article XII:4(a) and XVIII:12(a) (BISD 3S/171) there was nothing to prevent a contracting party in balance-of-payments difficulties from holding prior consultations with the Committee, under the normal procedures of these Articles. These procedures appeared adequate to accommodate the basic purpose of the Chilean proposal. Consultations in such cases would be full consultations by the Committee to examine the nature of the balance-of-payments difficulties of the consulting country and alternative corrective measures which may be available, and would take due account of all factors, including external factors, affecting the consulting country's balance-of-payments, as laid down in the relevant procedures established for the Committee's work, including Paragraphs 2 and 3 of the 1970 consultation procedures (BISD 18S/49) and Paragraph 12 of the 1979 Declaration (BISD 26S/208), also bearing in mind the considerations set out in document C/125 which was approved by the Council in May 1984 (C/M/178, pages 24-26). If, following such consultations, the consulting country found it necessary to introduce import restrictive measures for balance-of-payments purposes, further full consultations should be held. Depending on the time elapsed since the prior consultations these might focus more particularly on the scope and effect of the measures. However, this would be up to the Committee to judge depending on the circumstances of individual cases".<sup>131</sup>

## 5. Conclusions and recommendations of the Committee

The 1979 Declaration provides that:

"The Committee shall report on its consultations to the Council. The reports on full consultations shall indicate:

- "(a) the Committee's conclusions as well as the facts and reasons on which they are based;
- "(b) the steps the consulting contracting party has taken in the light of conclusions reached on the occasion of previous consultations;
- "(c) in the case of less-developed contracting parties, the facts and reasons on which the Committee based its decision on the procedure followed; and
- "(d) in the case of developed contracting parties, whether alternative economic policy measures are available.

"If the Committee finds that the consulting contracting party's measures

- "(a) are in important respects related to restrictive trade measures maintained by another contracting party<sup>132</sup> or
  - "(b) have a significant adverse impact on the export interests of a less-developed contracting party,
- "it shall so report to the Council which shall take such further action as it may consider appropriate.

...

"If the Committee finds that a restrictive import measure taken by the consulting contracting party for balance-of-payments purposes is inconsistent with the provisions of Articles XII, XVIII:B or this Declaration, it shall, in its report to the Council, make such findings as will assist the Council in making appropriate recommendations designed to promote the implementation of Articles XII and XVIII:B and this

<sup>131</sup>C/132, 32S/46, 47-48, para. 5.

<sup>132</sup>Footnote 2 to the Decision provides: "It is noted that such a finding is more likely to be made in the case of recent measures than of measures in effect for some considerable time."

Declaration. The Council shall keep under surveillance any matter on which it has made recommendations".<sup>133</sup>

Paragraph 13 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides as follows:

"The Committee shall report on its consultations to the General Council. When full consultation procedures have been used, the report should indicate the Committee's conclusions on the different elements of the plan for consultations, as well as the facts and reasons on which they are based. The Committee shall endeavour to include in its conclusions proposals for recommendations aimed at promoting the implementation of Articles XII and XVIII:B, the 1979 Declaration and this Understanding. In those cases in which a time-schedule has been presented for the removal of restrictive measures taken for balance-of-payments purposes, the General Council may recommend that, in adhering to such a time-schedule, a Member shall be deemed to be in compliance with its GATT 1994 obligations. Whenever the General Council has made specific recommendations, the rights and obligations of Members shall be assessed in the light of such recommendations. In the absence of specific proposals for recommendations by the General Council, the Committee's conclusions should record the different views expressed in the Committee. When simplified consultation procedures have been used, the report shall include a summary of the main elements discussed in the Committee and a decision on whether full consultation procedures are required."

See also the Secretariat Note of 24 June 1988 on "Consultations Held in the Committee on Balance-of-Payments Restrictions under Articles XII and XVIII:B since 1975", which reproduces in full all of the paragraphs of the Balance-of-Payments Committee's reports containing the Conclusions and Recommendations of the Committee from 1975 through 1988.<sup>134</sup>

See also the reference at page 381 above to the "interim conclusion" reached by the Committee in its Report on the simplified consultation held with Sri Lanka in 1994.

#### **6. Discussion and adoption by the GATT Council of reports by the Committee**

Reports on all consultations in the Balance-of-Payments Committee are submitted to the Council for

## IV. RELEVANT DOCUMENTS

*London*

Discussion: EPCT/C.II/PV/5, 6, 8, 13;  
 EPCT/C.II/QR/PV/1, 3, 5, 6;  
 EPCT/C.II/36, 45, 66  
 Reports: EPCT/C.II/59; EPCT/30  
 Other: EPCT/C.II/34, 44

*New York*

Discussion: EPCT/C.6/17 + Corr.1-2,  
 20 + Corr.1-2, 23, 27, 34, 105,  
 106  
 Reports: EPCT/C.6/15, 97/Rev.1 (p.62)  
 Other: EPCT/C.6/W/5, 11, 17 + Corr.1,  
 30 + Corr.1, 34, 43, 81

*Geneva*

Discussion: EPCT/EC/PV.2/22  
 EPCT/A/SR.27, 28, 29  
 EPCT/A/PV/28, 41  
 EPCT/TAC/SR/13  
 EPCT/TAC/PV/27, 28  
 Reports: EPCT/135, 163, 171, 180, 186,  
 189, 196, 212, 214/Rev.1/Add.1  
 EPCT/W/313  
 Other: EPCT/W/64, 73, 136, 194, 209,  
 211, 213, 215, 216, 217, 223, 231,  
 256, 272, 301, 318 + Add.1

*Havana*

Discussion: E/CONF.2/C.3/SR.19, 21, 24,  
 38, 46  
 Reports: E/CONF.2/C.3/57, 82  
 Other: E/CONF.2/C.3/F/W.8, 11

*CONTRACTING PARTIES*

Reports: GATT/CP.4/10, 31 + Corr.1  
 GATT/CP.5/24  
 L/24 + Add.1, L/51  
 Other: Annecy press releases 18, 32, 44  
 Press release Torquay/19  
 GATT/96

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## V. TABLES

### Key:

F = Full consultation

**F\*** = Last full consultation

S = Simplified consultation

P = Postponed

**D** = Disinvocation of Article XII or XVIII:B.

Numbers in parentheses are BOP/R/ report references.  
Reference to last full consultation indicated in boldface.

### Notes:

1. All countries listed were invoking balance-of-payments provisions as of 1979, unless otherwise noted. Invocations of Article XII or XVIII:B during the reference period are understood to mean either the first invocation by a particular country or a reinvocation after previous disinvocation of the relevant Article. Greece disinvoked Article XVIII in 1984; later consultations are under Article XII.
2. Italy, New Zealand (consultation on deposit requirement for purchases of foreign currency) and South Africa also consulted with the CONTRACTING PARTIES on an *ad hoc* basis in 1974-76, about their imposition of import deposits for balance of payments purposes, but in special Working Parties established for the purpose.
3. In the case of Israel and South Africa the Article under which the consultations are held is not specified.
4. The Czech and Slovak Federal Republic ceased to exist on 31 December 1992.
5. There were no disinvocations of Article XII or XVIII in 1993-94.



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