

ARTICLE XV
EXCHANGE ARRANGEMENTS

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I. TEXT OF ARTICLE XV AND INTERPRETATIVE NOTE AD ARTICLE XV

Article XV

Exchange Arrangements

1. The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the CONTRACTING PARTIES and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES.

2. In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems

9. Nothing in this Agreement shall preclude:

(a)

the Fund and the GATT, taking full account, in particular, of the implications of exchange measures for countries' obligations under the Agreement. Appropriate action here rests with member governments.

"The second problem is one of developing liaison between the two organizations themselves ...".²

Concerning GATT-Fund relations, see also below under paragraph 3.

(2) *Relationship between trade measures and financial system*

The Tokyo Declaration of 1973 which launched the Tokyo Round of multilateral trade negotiations noted that:

"The policy of liberalizing world trade cannot be carried out successfully in the absence of parallel efforts to set up a monetary system which shields the world economy from the shocks and imbalances which have previously occurred. The Ministers will not lose sight of the fact that the efforts which are to be made in the trade field imply continuing efforts to maintain orderly conditions and to establish a durable and equitable monetary system.

"The Ministers recognize equally that the new phase in the liberalization of trade which it is their intention to undertake should facilitate the orderly functioning of the monetary system".³

At their Fortieth Session in 1984, the CONTRACTING PARTIES adopted a Decision on "Exchange Rate Fluctuations and their Effect on Trade" in which they "urge that their concern regarding the relationship between exchange market instability and international trade be taken into account in ongoing efforts within the International Monetary Fund to review the operation of the international monetary system with a view to possible improvements" and "agree that they will keep under consideration through further exchanges of views the relationship between exchange market instability and trade".⁴

Concerning the relationship between the international trading system and the international financial system, and floating exchange rates, see also the 1980 Report of the Working Party on "Specific Duties"⁵ and the 1983 and 1984 Reports of the Consultative Group of Eighteen and associated Secretariat notes.⁶

2. Paragraph 2

(1) *"findings of statistical ... facts presented by the Fund"*

The Report of the Sub-Committee that redrafted the corresponding Article of the Charter during the Geneva session of the Preparatory Committee states:

"The provisions in paragraph 2 ... concerning the responsibility of the Fund in respect of statistical data relating to balances of payment or monetary reserves for the purpose of that Article is independent of any arrangement to be made between the Fund and the United Nations concerning the collection and appreciation of statistical data on balances of payments for other purposes".⁷

In 1978-80 the Working Party on "Specific Duties" examined the modalities for the application of Article II:6(a) in the monetary situation of increased flexibility of exchange rates. Although the Working Party consulted with the International Monetary Fund in this connection, "The representative of the Fund noted that ... the role of the Fund in the activities of the Working Party was to provide technical information to the CONTRACTING PARTIES; the Fund had no mandate to participate in interpreting the General Agreement. The Fund

²L/332/Rev.1 and Addenda, adopted on 2, 4, and 5 March 1955, 3S/170, 198, para. 9-11.

representative emphasized in particular that it was for the CONTRACTING PARTIES to decide how the provisions of Article II:6 should be applied under the present circumstances".⁸

(2) *"The CONTRACTING PARTIES, in reaching their final decision"*

These GATT-IMF consultations take place through the delivery of a statement by the IMF representative to the Committee concerning the economic and financial situation of the consulting contracting party. For each full balance-of-payments consultation, the Fund submits a "Recent Economic Developments" report. The 1970 procedures state that:

"The material supplied by the IMF as part of a consultation between the Fund and GATT should be circulated to the members of the Committee ... A copy may be supplied to any other contracting party which requests it".

scheme was extended, the Working Party again consulted with the Fund. Its Final Report notes that the United Kingdom terminated the import deposit scheme on 4 December 1970.²²

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account of any information brought to their attention by the GATT staff regarding the trade aspects of

4. Paragraph 4

(1) *“by exchange action frustrate”*

In 1977, a panel was established in response to a complaint of the United States stating that in February 1976 Japanese foreign exchange banks had been instructed not to open any new letters of credit for imports of thrown silk yarn from the United States. The complaint claimed, *inter alia*, that the restrictions were inconsistent with Article XV “by using foreign exchange banks to thwart the principles of the General Agreement.” The parties reached a bilateral solution to the dispute.³⁶

(2) *Distinction between trade action and exchange action*

A Special Sub-Group set up in 1954 during the Review Session carried out a thorough examination of GATT provisions on balance-of-payments restrictions and GATT-IMF relations. It concluded that “in many instances it was difficult or impossible to define clearly whether a government measure is financial or trade in character and frequently it is both”.³⁷ The Sub-Group however noted that the division of work between the CONTRACTING PARTIES and the Fund was in practice “based on the technical nature of government measures rather than on the effect of these measures on international trade and finance”.

The 1981 Secretariat Background Paper on the consultation with Italy concerning the Italian deposit requirement for purchases of foreign currency discusses the question of whether the Italian scheme represents a charge on importation or a charge on the transfer of payments:

“If the distinction between import and payments measures were made by taking into account the purpose or the effect of the action, the Italian scheme would probably be both a trade and an exchange measure: it is intended to improve Italy's payments position as well as to restrain imports, and it has had an impact both on payments for imports and the imports themselves. If however the distinction were made by looking at the restrictive technique used, the Italian deposit scheme would probably have to be regarded as an exchange measure since it is formulated and operated as a requirement to be fulfilled for the purchase of foreign exchange rather than for importation.

“The Executive Directors of the International Monetary Fund have 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. ‘The guiding principle’, they determined, ‘in ascertaining whether a measure is a restriction on payments and transfers for current transactions under Article VIII Section 2, is whether it involved a direct governmental limitation on the availability or use of exchange as such’ (Decision No. 1034 - (60/27) of 1 June 1960). In conformity with this principle the Fund has regarded the Italian measures as constituting a restriction on current international transactions requiring

these trade effects were concerned, the scheme could be considered in the spirit of the Declaration on Trade

general principles on the relationship between paragraphs 4 and 9 but to leave this question over for empirical consideration if and when particular points arose which had a bearing on it. ... They further 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 indeed was specifically envisaged by paragraph 5 of the Article)".⁶⁸

During the Review Session in 1954-55, Italy brought a complaint concerning action by Turkey providing

In 1952, the standing Panel on Complaints examined a special "contribution" levied by the Greek Government on certain imported goods, which the Greek delegation stated was "a charge imposed on foreign exchange allocated for the importation of goods from abroad equivalent to a multiple currency practice" considered by the Greek Government as indispensable to cover the widening gap between the official exchange rate and the effective purchasing power of the drachma. The Report of the Panel on "Special Import Taxes Instituted by Greece" referred to the passage directly above, observing as follows:

"... the principal question arising for determination was whether or not the Greek tax was an internal tax or charge on imported products within the meaning of paragraph 2 of Article III. If the finding on this point were affirmative, the Panel considered that it would be subject to the provisions of Article III whatever might have been the underlying intent of the Greek Government in imposing the tax ...

"On the other hand, if the contention of the Greek Government were accepted that the tax was not in nature of a tax or charge on imported goods, but was a tax on foreign exchange allocated for the payment of imports, the question would arise whether this was a multiple currency practice, and, if so, whether it was in conformit8e1e(o)-3.5(u)-src1

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IV. RELEVANT DOCUMENTS*London*

Discussion: EPCT/C.II/QR/PV/5 (p. 41)
EPCT/C.II/PV/13 (p. 16)
Reports: EPCT/C.II/43, 59; EPCT/30

New York

Discussion: EPCT/C.6/21 (p. 6-7), 23
Reports: EPCT/C.6/97/Rev.1 (p. 86)

Geneva

Discussion: EPCT/EC/PV.2/22