Draft Report on the Existing Procedures for Consultations under Articles XII-XIV

1. Terms of Reference

At the suggestion of Working Party 3 on the Continuing Administration of the Agreement, the Chairman of the Contracting Parties has asked this Working Party "to review the procedures adopted at the Third Session for consultations under Articles XII, XIII and XIV as set forth in GATT/CP.3/30/Rev.1 and 50/Rev.1 and to recommend such modifications in these procedures as the Working Party considers desirable in the light of recent developments."

2. Existing Procedures

The procedures adopted at the Third Session for consultation on urgent cases arising under Articles XII-XIV while the Contracting Parties are not in session, divide such cases into three types, each of which by its particular nature is provided with a different procedure. These procedures are summarised below.

Type 1: Article XII:4 (a), Article XIII:4 (c), Article XIV:2 and Annex J:3 (proviso)

The Chairman, when receiving a request by a contracting party for consultation under any of these provisions, is required

(a) to notify the contracting parties of the request; and

(b) to determine whether the consultation should take place at the next ordinary session, at a special session, or should be first entrusted to an ad hoc committee appointed by the Chairman.

Type 2: Article XII:4 (b) and Article XIII:4

The Chairman is required, before instituting a consultation under one of these provisions, to obtain, by postal or telegraphic canvass of the contracting parties, decisions as to:

(a) whether a consultation should be initiated or whether an invitation to consult should be extended to a particular contracting party; and if the answer is in the affirmative,
(b) whether the consultation should take place at the next ordinary session, at a special session, or be initiated by an ad hoc committee.

Type 3: Article XII:4 (d), Article XIII:5, Article XIV:1 (h) and Annex J:3 (except proviso)

Before action by the Contracting Parties is instituted under any of these provisions (or when a proposal for such action under Article XII:4 (d) is received from a contracting party) the Chairman is required to obtain, by postal or telegraphic canvass of the contracting parties, decisions as to:

(a) whether such action should be taken; and if yes

(b) whether such action should be taken at the next ordinary session, at a special session or be initiated with the Select Committee, which was appointed by the Contracting Parties for that purpose. (It was understood, however, that any general discussion of measures to remove underlying international disequilibrium, which might be initiated under Article XIII:5 would normally be made at an ordinary or special session).

3. Recommendations

After reviewing these procedures the Working Party recommends that the following modifications be adopted with effect from the close of the present session but that the existing procedures as set out in GATT/CP.3/30/Rev.1 and 50/Rev.1 should otherwise continue unchanged. These recommendations have been formulated on the basis of the decision of the Contracting Parties, upon the proposal of Working Party 3, to set up an Ad Hoc Committee on Agenda and Interessional Business, which is hereafter referred to as the "Interessional Committee".

(a) In respect of cases of types 2 and 3, the power of deciding whether a consultation should be initiated or whether action should be taken, should be given to the Interessional Committee.

(b) In respect of cases of all the 3 types the Interessional Committee should be empowered to decide whether a consultation should be initiated (or action should be taken) at the next ordinary session, at a special session or by an ad hoc working party. It is considered that as an Interessional Committee is in existence, there is no particular advantage in retaining the Select Committee procedure hitherto provided for cases of type 3.
(c) The powers referred to in (a) and (b) are given to the Intersessional Committee subject to the proviso that any contracting party which considers that its interests are substantially affected shall be entitled to call for either or both of the decisions to be taken by the Contracting Parties as a whole by postal or telegraphic ballot.

(d) In all cases where it is decided that a consultation should be initiated by an intersessional ad hoc working party, the task of establishing this working party should be carried out by the Intersessional Committee.

(e) In respect of cases of all the three types, the composition of any such working party established by the Intersessional Committee should be determined in the same way as that of any working party established by that Committee to handle matters arising intersessionally under other Articles of the Agreement provided that, in any case where the need for secrecy makes it desirable to limit the numbers of the working party concerned, the Intersessional Committee should be entitled to do this.

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1 For convenience of nomenclature, any bodies established by the Intersessional Committee to handle balance-of-payments matters requiring intersessional treatment under these procedures should be called "Working Parties" rather than "Committees".