19 January 1955

DRAFT OF NEW ARTICLE XII(a)

1. If a contracting party is no longer entitled to maintain import restrictions to safeguard its external financial position and balance of payments in accordance with the relevant provisions of this Agreement and finds that, in order to enable an industry having received incidental protection from those restrictions to adjust itself to the situation created by the removal of those restrictions, some transitional measure of protection is required and that no measure consistent with the other provisions of this Agreement and which would be less restrictive of international trade or less damaging to the commercial or economic interests of other contracting parties is feasible or practicable to achieve that objective, it may have recourse to the procedures set out in paragraph 2 below.

2. The contracting party concerned shall notify the Organization not later than one month before it ceases to be entitled to maintain restrictions under the relevant provisions of this Agreement to safeguard its external financial position and balance of payments of the difficulties which it meets in the achievement of the objective outlined in paragraph 1 above. The notification shall indicate the specific measure which the contracting party intends to maintain and the period during which this measure is expected to remain in force. It shall also contain the necessary data to enable the Organization to satisfy itself that the measure fulfills the requirements of paragraph 1 above. If the Organization concurs in the proposed maintenance of the measure, that measure may remain in effect, subject to such conditions or limitations as it may impose. The contracting party concerned shall undertake not to intensify the restrictive effect of the measure and to grant to the other contracting parties interested in the product subject to the restriction a fair share of its market for such product. It shall also undertake progressively to relax the restriction and to eliminate it as soon as practicable, and to submit every year a report to the Organization on the progress made in the elimination of that measure.

3. The Organization shall review annually the measures maintained under this Article on the basis of reports submitted by the contracting parties concerned. If, in the course of such a review, it finds that the maintenance or application of any measure under this Article is no longer consistent with the conditions and limitations imposed by it, or with the commitments given by the contracting party concerned in accordance with the provisions of paragraph 2 above, it may require that the measure be withdrawn or modified by a specified date provided that, in such case, it shall have regard to the possible need of the contracting party concerned for a period of time in which to make such withdrawal or modification.

Spec/43/55
4. Nothing in this article shall authorize any deviation from the provisions of Article XIII of this Agreement. Further, the concurrence of the Organization in a measure affecting imports of a product the rate of duty on which is bound under Article II of this Agreement shall not limit in any way the right of any contracting party substantially interested in the binding of that rate of duty to resort to the provisions of Article XXIII of this Agreement.

5. The provisions of this Article shall cease to have effect on 1 January 1960.

Text to be inserted in the text of the Report

Re Paragraph 4

It is agreed that the concurrence of the Organization in a measure affecting imports the rate of duty on which is NOT bound under Article II of this Agreement would not deprive a contracting party affected of its right to lodge a complaint under Article XXIII. Since, however, the Organization, in assessing the extent of the impairment of benefit, would have to take into consideration all the facts of the case and, in particular, the terms under which the benefit was obtained, including the provisions of Article XII(a), it is recognized that the Organization would not be in a position to allow a contracting party to resort to the withdrawal of concessions or suspension of obligations under paragraph 2 of Article XXIII, unless the effects of the measures concurred in proved to be substantially different from what could reasonably have been foreseen at the time the measure was considered by the Organization or unless the maintenance or administration of the measure is not consistent with the conditions and limitations imposed by the Organization at the time of the concurrence or the requests for modification or withdrawal made by the Organization in accordance with the provisions of paragraph 3.