ARTICLE XII

Restrictions to safeguard the Balance of Payments

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

2. (a) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary

   (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or

   (ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the contracting party's reserves or need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(b) Contracting parties applying restrictions under sub-paragraph (a) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph.
3.(a) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources.

(b) Contracting parties applying restrictions under this Article may determine the incidence of restrictions applied under this Article on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.

(c) Contracting parties applying restrictions under this Article undertake:

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

(ii) 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;

(iii) to reduce, to the greatest extent possible, the incidental protective effects of the restrictions;

(iv) not to apply restrictions which would prevent the importation of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(d) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of maximum 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). Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4.(a) Any contracting party applying new or substantially intensifying existing restrictions under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the Organization 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.

(b)(i) The Organization may at any time invite any contracting party which is applying import restrictions under this Article to enter into such consultations with it.
(ii) On a date to be determined by the Organization, the Organization shall review all restrictions still applied under this Article on that date. Thereafter, contracting parties applying import restrictions under this Article shall consult annually.

(iii) The Organization shall invite any contracting party which is applying import restrictions under this Article to enter into such consultations with it at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of paragraph 2 or 3 of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby.

(c) (i) In the course of consultations with a contracting party under this paragraph, the Organization shall indicate any respects in which the restrictions are not fully consistent with the provisions of paragraphs 2 and 3 of this Article or with those of Article XIII (subject to the provisions of Article XIV) and may make recommendations for the modification of the restrictions. If, as a result of the consultations, the Organization determines that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions referred to above, they shall so inform the contracting party and shall make appropriate recommendations for securing compliance within a specified period of time with the provision of the Agreement. If the contracting party does not comply with these recommendations within the specified period, the Organization may release any contracting party from such obligations under this Agreement towards the contracting party applying the restrictions as it determines to be appropriate in the circumstances.

(iii) If, as a result of consultations called for under sub-paragraph (b) (iii), the Organization determines that the restrictions are being applied inconsistently with the provisions of this Agreement referred to therein, it may release the contracting party bringing the complaint from specified obligations under this Agreement towards the contracting party applying the restrictions.

(d) In the consultations foreseen in this paragraph the Organization shall take into consideration the difficulties encountered by a contracting party in withdrawing or modifying restrictions due to adverse effects upon its exports through obstacles in other countries, such as quantitative restrictions maintained for other than balance-of-payments reasons, excessive tariffs, etc. ¹

¹ Norwegian proposal.
Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations. The Organization shall make provision for the utmost secrecy in the conduct of any consultation.

5. If there is a widespread application of import restrictions under this Article, or other circumstances indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall consider whether remedial measures might be taken, either by those contracting parties whose balance of payments are under pressure or by those whose balance of payments are tending to be exceptionally favourable, or by any appropriate intergovernmental organization, to remove the underlying causes of the disequilibrium. Following such consideration, if the circumstances appear to warrant it, the Organization may request the International Monetary Fund to make a finding and a report under Article VII, Section 1, of its Articles of Agreement. If the Fund finds that a general scarcity of a particular currency is developing, the Organization may, notwithstanding the provisions of Articles XI to XV of this Agreement, authorize the application of quantitative restrictions against imports from the contracting party concerned. In authorizing such restrictions, the Organization shall have due regard to the need to avoid unnecessary damage to the commercial interests of the contracting party concerned.

ARTICLE XIII

Non-discriminatory Administration of Quantitative Restrictions

[Unchanged from the existing text in the Agreement]

ARTICLE XIV

Exceptions to the Rule of Non-Discrimination

1. A contracting party which applies restrictions under Article XII may, in the use of such restrictions, deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time apply under Articles VIII and XIV of the Articles of Agreement of the International Monetary Fund, or under an analogous provision of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.

2. A contracting party which is applying import restrictions under Article XII may, with the consent of the Organization, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.

1 United Kingdom proposal. Cf., however, Australian proposal in W.9/132.
3. The provisions of Article XIII shall not preclude restrictions in accordance with the provisions of Article XII which are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the International Monetary Fund, on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

4. A contracting party shall not be precluded by Articles XI to XV, inclusive, of this Agreement from applying quantitative restrictions:

   (a) having equivalent effect to exchange restrictions authorized under section 3(b) of Article VII of the Articles of Agreement of the International Monetary Fund, or

   (b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

ARTICLE XV

Exchange Arrangements

[Unchanged from the existing text in the Agreement]

Interpretative Notes

Ad Article XII

Paragraph 3(c) (i)

Contracting parties applying restrictions will endeavour to avoid causing serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 3(c) (ii)

It is the intention of this provision that apart from exceptional circumstances the contracting party applying restrictions under Article XII will endeavour to avoid the complete exclusion of any product for which any other contracting parties have established a market in its territory.
Ad Article XIII

Paragraph 4

The term "special factors" includes changes in relative productive efficiency as between domestic and foreign producers or as between different foreign suppliers, and changes in the incidence of tariff rates which affect the competitive position between different foreign suppliers. ¹

Ad Article XIV

Paragraph 1

The provisions of this paragraph shall not be so construed as to preclude full consideration by the Organization, in the consultations provided for in paragraph 4 of Article XII, of the nature, effects and reasons for discrimination in the field of import restrictions.

Ad Article XV

Paragraph 2

It is the intention of the provisions of this Article that, in reaching its final decision in cases involving the application of restrictions under Article XII or under Section B of Article XVIII, the Organization shall consult with the International Monetary Fund and that after such consultation it shall accept the determination of the Fund on whether the total foreign exchange economies proposed or imposed, on both visible and invisible imports, are commensurate with the requirements of the balance-of-payments situation of the contracting party invoking the Articles in question. ²

¹ Proposed by the delegation of the Dominican Republic.

² Originally proposed by the United Kingdom, subsequently withdrawn; the United States has proposed its retention.