Working Party on Balance of Payments

ACTION AND PROCEDURES TO IMPLEMENT THE REVISED PROVISIONS OF ARTICLES XII AND XVIII:B

Note for Members of the Working Party

1. In paragraph 5 of its terms of reference, the Working Party on Balance of Payments was instructed:

   "To recommend action by the CONTRACTING PARTIES, insofar as the contracting parties which have accepted the Protocol Amending the Preamble and Parts II and III are concerned, in implementing the revised provisions of Article XII and of Section B of Article XVIII, and any changes in the intersessional procedures that may be necessary in the light of the revised provisions of these Articles."

Action implementing the Revised Provisions

2. The first action to be taken by the CONTRACTING PARTIES under the revised text is provided for in paragraph 4(b) of Article XII and paragraph 12(b) of Article XVIII, viz., a review of all restrictions applied under those two Articles. For this purpose the CONTRACTING PARTIES are required to determine a date.1 According to the Note in Annex H relating to Article XII:4(b), the review would be held normally within ninety days of the entry into force of the amendments. As the Amending Protocol came into force on 7 October 1957, the CONTRACTING PARTIES should, in principle, determine a date not later than 5 January 1958. It should only be mentioned that the Note in Annex H further provides that

   "should the CONTRACTING PARTIES find that conditions were not suitable for the application of the provisions of this sub-paragraph at the time envisaged, it may determine a later date."2

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1 By virtue of the Note in Annex H relating to XVIII:12(b), the reviews under the two provisions should be undertaken at the same time. In fact, they will no doubt be combined and referred to as a single review.

2 This later date may, however, not be more than thirty days after certain obligations are accepted by contracting parties responsible for a certain proportion of the contracting parties' total trade. See BISD, 3rd Sup., p. 172, paragraph 7, which discusses the date of the review with reference also to the consultations to follow it.

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3. In recommending a date for this purpose the Working Party will no doubt take into account the nature and scope of the "review" as envisaged by the CONTRACTING PARTIES when this provision was inserted in the Agreement. On this point the report of the relevant Review Working Party of the Ninth Session states as follows:

"As regards the nature and scope of the review contemplated in sub-paragraph 4(b), the Working Party agreed that it should be based on a detailed examination by the CONTRACTING PARTIES of the level, methods and effects on trade of the restrictions existing on the date selected for that operation, on the basis of data supplied by governments and gathered from other sources. The review should not, however, be a consultation with the individual contracting parties concerned, in the sense that it would not involve any detailed discussion of the motives justifying the maintenance of those restrictions ...."\(^1\)

4. The Working Party should, in the light of this information, recommend a date for the initiation of the review provided for in Articles XII:4(b) and XVIII:12(b)

**Intersessional Procedures**

5. Paragraph 4(b) of Article XII, in its original form, provides inter alia that "the CONTRACTING PARTIES .... shall invite any contracting party substantially intensifying such restrictions to consult within thirty days". The corresponding provision in the revised text (paragraph 4(a)) provides that "any contracting party .... raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after .... intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES ....". With the revision of the text the responsibility of initiating a consultation has passed from the CONTRACTING PARTIES to the contracting parties applying the restrictions.

6. In view of this, the Working Party may wish to call attention to the fact that the last sentence of paragraph 9 of the current Intersessional Procedures would not be relevant for the operation of the revised text of Article XII or

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\(^1\) BISD, 3rd Supplement, p. 172.
of Section B of Article XVIII, although it remains valid for those contracting parties which continue to operate under the old text of Article XII. The sentence in question reads as follows:

"Upon the basis of this information (i.e. detailed information supplied by a contracting party modifying its import restrictions) the Chairman and the Executive Secretary determine whether there is a **prima facie** case for initiation of a consultation under Article XII:4(b)."