PROPOSALS BY THE UNITED STATES DELEGATION

New Article XII

Restrictions to Safeguard the Balance of Payments

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

2. (a) Subject to sub-paragraph (b) of this paragraph, no contracting party may maintain, institute, or intensify restrictions under this Article without the approval of the CONTRACTING PARTIES.

(b) Any party maintaining such restrictions on [effective date] shall immediately consult with the CONTRACTING PARTIES with a view to obtaining approval for their continuation. Any contracting party which is considering the need to institute new, or intensify existing, restrictions under this Article shall, before applying such new or intensified restrictions (or in circumstances in which prior consultation is impracticable, immediately after doing so), consult with the CONTRACTING PARTIES with a view to obtaining their approval. In cases where approval is sought after the institution or intensification of restrictions, the CONTRACTING PARTIES shall render their decision within sixty days of the initiation of consultation by the contracting party concerned.

3. (a) Restrictions approved by the CONTRACTING PARTIES under paragraph 2 of this article shall not be applied for more than one year: (i) from [effective date] if in force on that date; (ii) from the time they are instituted; provided however, that they may be applied for not more than one additional year with the prior approval of the CONTRACTING PARTIES given within sixty days of the beginning of that additional year.
(b) When restrictions referred to in 3(a) are intensified or otherwise modified, these intensified or modified restrictions shall not be applied beyond the terminal date established according to the provisions of 3(a).

(c) No contracting party shall be entitled to avail itself of the provisions of this Article for the purpose of imposing restrictions within twelve months of the end of the period of approval indicated in sub-paragraph (a) of this paragraph.

4. A contracting party applying restrictions under this Article shall progressively relax them as soon as its external financial position and balance of payments permit.

5. A contracting party, in determining the incidence of restrictions applied under this Article on imports of different products or classes of products, and in administering these restrictions, undertakes to avoid unnecessary damage to the commercial or economic interests of any other contracting party and, in particular,

(i) to maintain, to the greatest extent possible, the normal pattern of competitive import trade;

(ii) in the case of any product, the exclusion or excessive limitation of which would impair normal channels of trade or seriously damage the position of established foreign suppliers, to permit at a minimum a sufficient volume of imports to preclude such impairment or damage;

(iii) to avoid undue stimulation of domestic industries;

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

6. (a) In the course of the consultations referred to in paragraph 2 the CONTRACTING PARTIES shall consider all relevant matters, including:

(i) the nature of the contracting party's balance-of-payment difficulties, and the appropriateness of the general level of the restrictions proposed or applied by the contracting party to deal with the problem;

(ii) whether these restrictions comply with paragraph 5 of this Article;

(iii) whether, in cases where consultations are being held to obtain approval for a second year of restrictions under paragraph 3 of this Article, the contracting party is administering its restrictions in such a manner as to fulfil its continuing obligations under paragraph 4;

(iv) whether alternative corrective measures are available, and, if so, are being adequately employed.
(b) The CONTRACTING PARTIES may at any time invite any contracting party to enter into consultations with them regarding any subject within the scope of this Article or of Article XIV, and a contracting party so invited shall participate in the consultations.

(c) A contracting party proposing or applying restrictions under this Article shall supply the information needed by the CONTRACTING PARTIES for the purposes of these consultations.

7. If, in the course of consultations referred to in paragraphs 2 and 6 of this Article, the CONTRACTING PARTIES determine that the restrictions being maintained or proposed to be applied (or being temporarily applied in circumstances in which prior approval was impracticable) are inconsistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV), they shall direct the contracting party concerned to abstain from, withdraw or modify such restrictions. The contracting party shall comply with such direction and, if the restrictions are already being applied, shall do so by such date as the CONTRACTING PARTIES may prescribe.

New 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 discrimination under current authorization of the International Monetary Fund in restrictions on payments and transfers for current international transactions under the Articles of Agreement of the Fund, or to discrimination specifically authorized under the provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.

2. 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.

3. A contracting party shall not be precluded by Articles XI to XV, inclusive, of this Agreement from applying quantitative restrictions having equivalent effect to exchange restrictions authorized under section 3(b) of Article VII of the Articles of the International Monetary Fund.
New 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. (a) In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balance of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund. In such consultations, the CONTRACTING PARTIES shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments. The CONTRACTING PARTIES shall also accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that contracting party and the CONTRACTING PARTIES.

(b) The CONTRACTING PARTIES, in reaching a decision in any case involving the application of restrictions under Article XII or under Section B of Article XVIII (under-developed countries) shall seek and accept the determination of the Fund as to

(i) whether the balance-of-payments position of the country concerned justifies restrictions under the relevant Article;

(ii) the general level of the restrictions, if any, required to deal with this position; and

(iii) whether the general level of the restrictions proposed or applied by the contracting party is appropriate to the need.

3. The CONTRACTING PARTIES shall seek agreement with the Fund regarding procedures for consultation under paragraph 2 of this Article.

4. Contracting parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.

5. If the CONTRACTING PARTIES consider, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a contracting party in a manner inconsistent with the exceptions provided for in this Agreement for quantitative restrictions, they shall report thereon to the Fund.
6. Any contracting party which is not a member of the Fund shall, within a time to be determined by the CONTRACTING PARTIES after consultation with the Fund, become a member of the Fund, or failing that, enter into a special exchange agreement with the CONTRACTING PARTIES. A contracting party which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the CONTRACTING PARTIES. Any special exchange agreement entered into by a contracting party under this paragraph shall thereupon become part of its obligations under this Agreement.

7. (a) A special exchange agreement between a contracting party and the CONTRACTING PARTIES under paragraph 6 of this Article shall provide to the satisfaction of the CONTRACTING PARTIES that the objectives of this Agreement will not be frustrated as a result of action in exchange matters by the contracting party in question.

(b) The terms of any such agreement shall not impose obligations on the contracting party in exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

8. A contracting party which is not a member of the Fund shall furnish such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the CONTRACTING PARTIES may require in order to carry out their functions under this Agreement.

9. Nothing in this Agreement shall preclude:

The use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that contracting party's special exchange agreement with the CONTRACTING PARTIES.