

CONSULTATION PROCEDURES FOR BALANCE-
OF PAYMENTS RESTRICTIONS

Draft submitted by Special Drafting Group

I. Paragraph 10 of Article XVIII

- 10.(a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES 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) On a date to be determined by the CONTRACTING PARTIES the CONTRACTING PARTIES shall review all restrictions still applied under this Section on that date. Beginning two years after that date, contracting parties applying import restrictions under this Section shall enter into consultations of the type defined in sub-paragraph (a) above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES, provided that no consultation under this sub-paragraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this paragraph.
- (c) (i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) above, the CONTRACTING PARTIES find that the restrictions are not fully consistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.
- (ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of one or more contracting parties is caused or threatened thereby, they shall so inform the contracting party and shall make appropriate recommendations for securing compliance within a specified period of time with such provisions. If the contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party whose trade is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(d) The CONTRACTING PARTIES shall invite any contracting party which is applying import restrictions under this Section to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the parties concerned have not been successful. If, as a result of such consultations, no agreement is reached and the CONTRACTING PARTIES determine that the restrictions are being applied inconsistently with those provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(e) When proceeding in accordance with this paragraph the CONTRACTING PARTIES shall have due regard to the factors referred to in paragraph 2 of this Article. Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations. The CONTRACTING PARTIES shall make provision for the utmost secrecy in the conduct of any consultation.

Interpretative Note

Ad paragraph 10 (c) (ii) and (d)

If a contracting party against which action has been taken in accordance with the last sentence of paragraph (c) (ii) or (d) of paragraph 10 finds that the release of obligations authorized by the CONTRACTING PARTIES adversely affects the operation of its programme and policy of economic development, it will be free to withdraw from the Agreement in accordance with the procedure laid down in paragraph 2 of Article XXIII

II. Paragraph 4 of Article XII

Incorporating changes made in the light of the

corresponding revised text of the provisions in Article XVIII, Section B

4.(a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied 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 CONTRACTING PARTIES 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) On a date to be determined by the CONTRACTING PARTIES the CONTRACTING PARTIES shall review all restrictions still applied under this Article on that date. Beginning one year after that date, contracting parties applying import restrictions under this Article shall enter into consultations of the type defined in sub-paragraph (a) above with the CONTRACTING PARTIES annually.

(c)(i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) above, the CONTRACTING PARTIES find that the restrictions are not fully consistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of one or more contracting parties is caused or threatened thereby, they shall so inform the contracting party and shall make appropriate recommendations for securing compliance within a specified period of time with such provisions. If the contracting party does not comply with these recommendations within a specified period, the CONTRACTING PARTIES may release any contracting party whose trade is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(d) The CONTRACTING PARTIES shall invite any contracting party which is applying import restrictions under this Article to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the parties concerned have not been successful. If, as a result of such consultations, no agreement is reached and the CONTRACTING PARTIES determine that the restrictions are being applied consistently with those provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(e) In the consultations foreseen in this paragraph the CONTRACTING PARTIES 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 and excessive tariffs.¹

(f) Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations. The CONTRACTING PARTIES shall make provision for the utmost secrecy in the conduct of any consultation.

¹ See W.9/208, regarding reservations.