ARTICLE XV

EXCHANGE ARRANGEMENTS

I. TEXT OF ARTICLE XV AND INTERPRETATIVE NOTE AD ARTICLE XV

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. In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances 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, and shall 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. The CONTRACTING PARTIES in reaching their final decision in cases involving the criteria set forth in paragraph 2 (*a*) of Article XII or in paragraph 9 of Article XVIII, shall accept the determination of the Fund as to what constitutes a serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.

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:

(*a*) 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, or

(*b*) the use by a contracting party of restrictions or controls on imports or exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions.

Interpretative Note *Ad* Article XV from Annex I

Paragraph 4

The word "frustrate" is intended to indicate, for example, that infringements of the letter of any Article of this Agreement by exchange action shall not be regarded as a violation of that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus, a contracting party which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund will not thereby be deemed to contravene Article XI or Article XIII. Another example would be that of a contracting party which specifies on an import licence the country from which the goods may be imported, for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls.

II. INTERPRETATION AND APPLICATION OF ARTICLE XV

A. SCOPE AND APPLICATION OF ARTICLE XV

1. Paragraph 1

(1) "jurisdiction"

In the London draft of the Charter the word used was "competence", but was changed to "jurisdiction" at Geneva. The precise difference between the two words was not clearly defined. In the course of the discussion, it was stated that

> "it seems ... that there is a real difference here between saying matters within the jurisdiction of the Fund, which relates ... strictly to the powers the Fund has, whereas matters within the competence of the Fund are matters on which the Fund, by reason of the subject matter which it deals with, is competent to provide the facts or to express an opinion. As one might say in a Government department ... which has certain legal powers in relation to a part of its field and no powers in another, certain things are within the jurisdiction of that government department, but a great many more are within its competence".[1]

In 1954-55, the Review Working Party on Quantitative Restrictions set up a Special Sub-Group on GATT/Fund Relations. The Report of this Sub-Group stated that in general,

> "... the group felt that the more important problem was not that of defining the respective jurisdictions of the CONTRACTING PARTIES and the Fund but that of establishing more effective machinery for consultation in accordance with Article XV.
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> "In this connection, the group agreed that there were two problems. The first was that of ensuring that governments who were members of both bodies should themselves pursue a coordinated policy in relation to

[1]EPCT/A/PV/29, p. 46; see also *ibid*. p. 40-41.

the Fund and the GATT, taking full account, in particular, of the implications of exchange measures for countries' obligations under the Agreement. Appropriate action here rests with member governments.

"The second problem is one of developing liaison between the two organizations themselves ...".[2]

Concerning GATT-Fund relations, see also below under paragraph 3.

(2) Relationship between trade measures and financial system

The Tokyo Declaration of 1973 which launched the Tokyo Round of multilateral trade negotiations noted that:

"The policy of liberalizing world trade cannot be carried out successfully in the absence of parallel efforts to set up a monetary system which shields the world economy from the shocks and imbalances which have previously occurred. The Ministers will not lose sight of the fact that the efforts which are to be made in the trade field imply continuing efforts to maintain orderly conditions and to establish a durable and equitable monetary system.

"The Ministers recognize equally that the new phase in the liberalization of trade which it is their intention to undertake should facilitate the orderly functioning of the monetary system".[3]

At their Fortieth Session in 1984, the CONTRACTING PARTIES adopted a Decision on "Exchange Rate Fluctuations and their Effect on Trade" in which they "urge that their concern regarding the relationship between exchange market instability and international trade be taken into account in ongoing efforts within the International Monetary Fund to review the operation of the international monetary system with a view to possible improvements" and "agree that they will keep under consideration through further exchanges of views the relationship between exchange market instability and trade".[4]

Concerning the relationship between the international trading system and the international financial system, and floating exchange rates, see also the 1980 Report of the Working Party on "Specific Duties"[5] and the 1983 and 1984 Reports of the Consultative Group of Eighteen and associated Secretariat notes.[6]

2. Paragraph 2

(1) "findings of statistical ... facts presented by the Fund"

The Report of the Sub-Committee that redrafted the corresponding Article of the Charter during the Geneva session of the Preparatory Committee states:

"The provisions in paragraph 2 ... concerning the responsibility of the Fund in respect of statistical data relating to balances of payment or monetary reserves for the purpose of that Article is independent of any arrangement to be made between the Fund and the United Nations concerning the collection and appreciation of statistical data on balances of payments for other purposes".[7]

In 1978-80 the Working Party on "Specific Duties" examined the modalities for the application of Article II:6(a) in the monetary situation of increased flexibility of exchange rates. Although the Working Party consulted with the International Monetary Fund in this connection, "The representative of the Fund noted that ... the role of the Fund in the activities of the Working Party was to provide technical information to the CONTRACTING PARTIES; the Fund had no mandate to participate in interpreting the General Agreement. The Fund

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[2]L/332/Rev.1 and Addenda, adopted on 2, 4, and 5 March 1955, 3S/170, 198, para. 9-11.
[3]MIN(73)1, Declaration of Ministers approved at Tokyo on 14 September 1973, 20S/19, 22, para. 7.
[4]L/5761, adopted on 30 November 1984, 31S/15.
[5]L/4858, adopted on 29 January 1980, 27S/149.
[6]L/5572, 30S/96, 98-99, paras. 9-11; L/5721, 31S/52, 53-54, paras. 7-10; CG.18/W/74, "The Relation between the International Trading System and the International Financial System", dated 26 April 1983.
[7]EPCT/163, p. 22.

representative emphasized in particular that it was for the CONTRACTING PARTIES to decide how the provisions of Article II:6 should be applied under the present circumstances".[8]

(2) "The CONTRACTING PARTIES, in reaching their final decision"

During discussions at the Havana Conference of paragraphs 2 and 3 of the corresponding Charter Article, Article 24, it was stated that "if the provisions of Article 24 were considered with Article 21 [XII], there was no basis for the fears that the ITO would be subservient to the Fund. The provisions of paragraphs 2(a)(ii) and 3(a) of Article 21 [XII] made it clear that the final decision as to whether restrictions would be instituted or maintained rested with the ITO, notwithstanding determinations made by the IMF".[9]

During Council discussion of the 1973 Report of the Committee on Balance-of-Payments Measures on the consultations with Spain, the representative of Spain stated his view that the Committee, in concluding that in the case of Spain the GATT balance-of-payments provisions were no longer applicable, had followed too strictly the determination of the IMF. The representative of Uruguay stated "that the report of the IMF should be considered as one element, but not the only element to be taken into account. While the IMF report could not be contradicted as to the state of the balance of payments, only the CONTRACTING PARTIES were competent to judge the relationship between the balance-of-payments situation and the necessity for greater liberalization of trade. It was up to GATT to decide whether measures taken were efficient and whether they should be maintained or not".[10] Some other contracting parties stated that in view of the IMF's determination and the provisions of Article XV:2 the Committee's conclusions could not have been different. The Report was adopted by the Council.[11]

(3) "financial aspects of other matters ..."

In discussions at the Geneva session of the Preparatory Committee concerning the meaning of "financial aspects of other matters covered in consultation in such cases", one representative gave the example that in the case of imminent threat to the balance of payments of a country

> "matters to be taken into consideration may be almost entirely trade questions, such as, for instance, the imminent threat to Australia's balance of payments through the failure of her wheat crop. I say nothing about what would happen if all the sheep died. Equally there might be, in the case of another country, some financial aspect of the imminent threat on which I should have thought the assistance of the International Monetary Fund would be extremely useful to the ITO."[12]

(4) Application of paragraph 2: role of the International Monetary Fund

(a) Balance-of-payments consultations

The description of procedures for full consultations on balance-of-payments measures under Article XII:4(b) or Article XVIII:12(b), which was agreed in 1970, provides that

> "Under paragraph 2 of Article XV, the CONTRACTING PARTIES are required to consult with the IMF on the points specified in that paragraph. As soon as the programme of consultations for the year is drawn up and taken note of by the Council, the Director-General should send a communication to invite the IMF to consult with the CONTRACTING PARTIES in connexion with each of the GATT consultations. In each case the GATT-IMF consultations will take place in the Committee on Balance-of-Payments Restrictions prior to the GATT consultation".[13]

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[8] L/4858, adopted on 29 January 1980, 27S/149.
[9] E/CONF.2/C.3/SR.24, p. 3.
[10] C/M/89, p. 7.
[11] C/M/89, p. 7-8, C/M/90, p. 2-3.
[12] EPCT/A/PV/41, pp. 69-70.
[13] L/3388, 18S/48, 51, para. 8.

These GATT-IMF consultations take place through the delivery of a statement by the IMF representative to the Committee concerning the economic and financial situation of the consulting contracting party. For each full balance-of-payments consultation, the Fund submits a "Recent Economic Developments" report. The 1970 procedures state that:

> "The material supplied by the IMF as part of a consultation between the Fund and GATT should be circulated to the members of the Committee ... A copy may be supplied to any other contracting party which requests it".[14]

In "simplified consultations" under Article XVIII:12(b) and the procedures agreed in 1972, the Fund supplies balance-of-payments statistics but is not consulted unless the result of the consultations is a recommendation by the Committee that full consultations be held.[15]

In 1982-83 discussions took place concerning the treatment of balance-of-payments problems confronting heavily-indebted developing countries. A 1984 Statement by the Chairman of the Committee on Balance-of-Payments Restrictions to the Council, which summarized the result of these discussions, stated, *inter alia*, that:

> "The suggestion, that measures relating to trade policy agreed upon under standby or extended facility arrangements with the IMF could be notified to the GATT, had already been strongly questioned during the discussions in the Consultative Group of 18. During the present informal discussions, there was also clear opposition to the idea that a formal link might be established between commitments undertaken in such a delicate context and the response of other contracting parties in the form of measures designed to facilitate an expansion of the export earnings of the consulting country. It is, however, clear that under Paragraph 4 of the 1970 consultation procedures, consulting parties are required to keep the GATT secretariat regularly informed of any changes in trade measures, whether or not such measures are related to commitments vis-à-vis the Fund. Against this background, there was no evidence of support for the suggestion that there should be greater synchronization between consultations in the Committee and the consultations undertaken by the IMF".[16]

Further concerning the role of the Fund in balance-of-payments consultations, see the 1987 Note by the Secretariat on "Articles XII, XIV, XV and XVIII".[17]

See also the material under Article XVIII:10 from the three parallel Panel Reports on "Republic of Korea - Restrictions on Imports of Beef," complaints by Australia,[18] the United States,[19] and New Zealand.[20]

(b) Consultations on other problems involving financial issues

The First Report of the Working Party on "United Kingdom Import Deposits", which examined the Import Deposit Scheme introduced by the United Kingdom on 27 November 1968, notes that the Working Party decided, in agreement with the representative of the United Kingdom, to consult with the International Monetary Fund in accordance with the provisions of Article XV. At the consultation, the statement presented by the Fund representative concluded: "'In these circumstances, the import deposit scheme does not go beyond the extent necessary, in conjunction with other measures, to achieve a reasonable strengthening of the United Kingdom's reserve position." The Working Party examined matters including the use of the monies collected, the product coverage of the scheme and its trade effect. The Conclusions provided that "The Working Party examined the import deposit scheme ... in the light of the findings of the International Monetary Fund ... Taking into account this finding, the Working Party concluded that the United Kingdom import deposits were not more restrictive than measures that an application of the provisions of Article XII of the General Agreement permits".[21] When the

[14] *Ibid.*, 18S/51, para. 9.
[15] L/3772/Rev.1, 20S/47, 49, para. 3; see also section II.C under Article XII.
[16] C/125 dated 13 March 1984, approved by the Council on 15/16 May 1984 (C/M/178, p. 26), 31S/56, 59, para. 9.
[17] MTN.GNG/NG7/W/14, dated 11 August 1987, p. 17-18, paras. 55-56.
[18] L/6504, adopted on 7 November 1989, 36S/202.
[19] L/6503, adopted on 7 November 1989, 36S/268.
[20] L/6505, adopted on 7 November 1989, 36S/234.
[21] L/3193, adopted on 15 April 1969, 17S/144-149, 149, paras. 17-18.

scheme was extended, the Working Party again consulted with the Fund. Its Final Report notes that the United Kingdom terminated the import deposit scheme on 4 December 1970.[22]

The Report of the Working Party on the "United States Temporary Import Surcharge" introduced on 16 August 1971 notes that the Working Party consulted with the Fund. The United States representative referred to Article XV, cited a finding by the International Monetary Fund that "in the absence of other appropriate action and in the present circumstances, the import surcharge can be regarded as being within the bounds of what is necessary to stop a serious deterioration in the United States' balance-of-payments position", and cited a statement to the Working Party by the Fund representative that the Fund had no other alternative measures to suggest at that time.[23] Other members of the Working Party drew attention to the full findings of the Fund; the Working Party examined as well the modalities of the surcharge and its effects on trade. The Conclusions of the Report state, *inter alia*:

> "The Working Party took note of the findings of the International Monetary Fund and recognized that the United States had found itself in a serious balance-of-payments situation which required urgent action. While noting the contrary views of the United States, the other members of the Working Party ... considered that the surcharge, as a trade restrictive measure, was inappropriate given the nature of the United States balance-of-payments situation and the undue burden of adjustment placed upon the import account with consequent serious effects on the trade of other contracting parties".[24]

3. Paragraph 3: Arrangements for consultation with the International Monetary Fund

The Havana Conference "Resolution Establishing an Interim Commission for the International Trade Organization" provided that the Interim Commission would have as one of its tasks "to prepare, in consultation with inter-governmental organizations other than the United Nations, for presentation to the first regular session of the Conference, documents and recommendations concerning the implementation of the provisions of paragraphs 1 and 3 of Article 87 of the Charter".[25] In 1948 the Executive Committee of the Interim Commission drew up an agreement between the ITO and the Fund[26], but as the Havana Charter did not enter into force, this agreement was never finalized.

In 1948 and 1949 the CONTRACTING PARTIES and the International Monetary Fund agreed on a general "Arrangement for co-ordination and consultation"[27], and an arrangement on "Co-ordination of public announcements relating to consultations".[28]

In 1954-55, the Review Working Party on Quantitative Restrictions set up a Special Sub-Group on GATT/Fund Relations. The Report of this Sub-Group noted that:

> "... the CONTRACTING PARTIES had consulted with the Fund on all matters where consultation was required under Article XV of the General Agreement. It noted that the Articles of the Agreement of the Fund do not contain a comparable requirement for consultation, and also that Fund consultation with the CONTRACTING PARTIES on some exchange matters which might have important trade effects was often not appropriate or feasible for reasons of urgency or secrecy ...
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> "The group felt that in most cases it would be sufficient that co-ordination would take place between the CONTRACTING PARTIES and the Fund on a staff-to-staff basis. ... This would help not only to ensure that, in appropriate cases, the Fund staff, in preparing its reports to the Executive Directors, would take full

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[22]L/3526, 18S/210, 212, para. 6.

[23]L/3573, adopted on 16 September 1971, 18S/212, 214, para. 8. The section of the Report dealing with the consultations with the Fund has not been derestricted and does not appear in the BISD.

[24]*Ibid.*, 18S/222, para. 39.

[25]Paragraph 1 of Article 87 of the Havana Charter mandated the ITO to make arrangements for effective co-operation and the avoidance of unnecessary duplication in the activities of inter-governmental organizations.

[26]See ICITO/EC.2/2/Add.2 (draft), ICITO/EC.2/14 Annex A (revision), discussion at ICITO/EC.2/SR.5 p. 5-8, approved with amendments at ICITO/EC.2/SR.14 p. 2.

[27]I/120, proposed by the Chairman of the CONTRACTING PARTIES by letter dated 9 September 1948 and agreed to by the Fund by letter dated 28 September 1948.

[28]I/120-123.

account of any information brought to their attention by the GATT staff regarding the trade aspects of exchange measures but also to ensure that matters of concern to the CONTRACTING PARTIES were brought to the attention of the Executive Directors before they took their decisions."[29]

The Sub-Group recommended that:

"(a) The CONTRACTING PARTIES should draw the attention of the Fund to their intention to have the GATT staff, in appropriate cases and where practicable, discuss with the Fund staff trade matters which had implications for exchange policy, and should inform the Fund that the GATT staff would be prepared, at the request of the Fund, to enter into similar discussions, where practicable, on the trade effects of exchange matters under Fund consideration.

"(b) Pursuant to this intention, the Executive Secretary should be authorized to work out with the Fund procedures for ensuring the maximum practicable degree of cooperation between the two staffs on matters of mutual concern to the CONTRACTING PARTIES and the Fund.

"(c) The Intersessional Committee should be authorized to conduct such consultations with the Fund as might seem appropriate in furtherance of the objectives of paragraph 1 of Article XV.

"(d) The CONTRACTING PARTIES should draw the attention of the International Monetary Fund to the new arrangements with respect to the Intersessional Committee, should explain that this would make consultation between the CONTRACTING PARTIES and the Fund easier and more expeditious than hitherto, and should express the hope that this should improve progressively the efficiency of consultation both ways between them.

"(e) The Executive Secretary should be requested to pursue consultations with representatives of the Fund with a view to preparing a formal agreement between the Fund and the proposed Organization [for Trade Cooperation] for consideration by both parties at a suitable future date".[30]

These recommendations were drawn to the attention of the Fund by the Executive Secretary in April 1955. At the Tenth Session in November 1955, it was agreed that recommendation (e) would be set aside pending the entry into force of the Agreement Establishing the Organization for Trade Cooperation.[31] However, informal discussions between GATT and Fund staff did result in arrangements for the transmission to the Secretariat of IMF documentation, especially in connection with balance-of-payments consultations, which were noted and approved at the Eleventh Session in October 1956.[32]

See also the discussion above at page 431 on the IMF role in consultations on balance-of-payments measures.[33]

The Mandate of the Consultative Group of Eighteen (CG-18), as adopted in 1975 and confirmed in 1979, provides that "The task of the Group is to facilitate the carrying out, by the CONTRACTING PARTIES, of their responsibilities, particularly with respect to … the international adjustment process and the co-ordination, in this context, between the GATT and the IMF".[34] The first and second reports of the CG-18 to the Council note the discussions in the Group during 1975 through 1977 on measures to improve co-ordination with the Fund.[35]

[29]L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 199, paras. 12-13.

[30]*Ibid.*, 3S/199-200, para. 14. In the Review Session, agreement was reached on institutional arrangements including an Agreement Establishing the Organization for Trade Cooperation, but this agreement never entered into force.

[31]SR.10/8.

[32]L/533, SR.11/3.

[33]L/3388, 18S/48, 51, paras. 8-9.

[34]L/4204, Decision of the Council of 11 July 1975, 22S/15.

[35]L/4429, 23S/38, 45, para. 25; L/4585, 24S/58, 59-60, paras. 7-8.

4. Paragraph 4

(1) "by exchange action frustrate"

In 1977, a panel was established in response to a complaint of the United States stating that in February 1976 Japanese foreign exchange banks had been instructed not to open any new letters of credit for imports of thrown silk yarn from the United States. The complaint claimed, *inter alia*, that the restrictions were inconsistent with Article XV "by using foreign exchange banks to thwart the principles of the General Agreement." The parties reached a bilateral solution to the dispute.[36]

(2) Distinction between trade action and exchange action

A Special Sub-Group set up in 1954 during the Review Session carried out a thorough examination of GATT provisions on balance-of-payments restrictions and GATT-IMF relations. It concluded that "in many instances it was difficult or impossible to define clearly whether a government measure is financial or trade in character and frequently it is both".[37] The Sub-Group however noted that the division of work between the CONTRACTING PARTIES and the Fund was in practice "based on the technical nature of government measures rather than on the effect of these measures on international trade and finance".

The 1981 Secretariat Background Paper on the consultation with Italy concerning the Italian deposit requirement for purchases of foreign currency discusses the question of whether the Italian scheme represents a charge on importation or a charge on the transfer of payments:

> "If the distinction between import and payments measures were made by taking into account the purpose or the effect of the action, the Italian scheme would probably be both a trade and an exchange measure: it is intended to improve Italy's payments position as well as to restrain imports, and it has had an impact both on payments for imports and the imports themselves. If however the distinction were made by looking at the restrictive technique used, the Italian deposit scheme would probably have to be regarded as an exchange measure since it is formulated and operated as a requirement to be fulfilled for the purchase of foreign exchange rather than for importation.
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> "The Executive Directors of the International Monetary Fund have decided in 1960 that, for the purposes of Article VIII of the Fund Agreement, the criterion for distinguishing between trade and exchange measures should normally be the technique used. 'The guiding principle', they determined, 'in ascertaining whether a measure is a restriction on payments and transfers for current transactions under Article VIII Section 2, is whether it involved a direct governmental limitation on the availability or use of exchange as such' (Decision No. 1034 - (60/27) of 1 June 1960). In conformity with this principle the Fund has regarded the Italian measures as constituting a restriction on current international transactions requiring Fund approval under Article VIII Section 2, an approval which it has granted until 30 September 1981 (C/M/149, page 12)."[38]
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> "In summary it can be said that the CONTRACTING PARTIES - unlike the IMF - have never formally decided how to distinguish between trade and exchange controls ... Their approach has been to examine particular restrictive measures affecting trade independent of the form that these measures took".[39]

The 1981 Report of the Committee on Balance-of-Payments Restrictions on the "Italian Deposit Requirement for Purchases of Foreign Currency" notes the view of the Italian Government "that the GATT rules on trade measures taken for balance-of-payments purposes did not apply to the deposit scheme because it was of a monetary nature and its main and primary effects were financial and monetary". The Committee concluded, *inter alia*, "that the deposit scheme, though monetary in form, had some effect on trade and that, in so far as

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[36]L/4530 (complaint) and Council discussion at C/M/122, p. 7-9; see also L/4637, Report of the Panel on "Japanese Restrictions on Imports of Thrown Silk Yarn", adopted on 17 May 1978, 25S/107.

[37]L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 196, para. 2.

[38]BOP/W/51, p. 4, paras. 9-10.

[39]*Ibid.*, p. 5, para. 14.

these trade effects were concerned, the scheme could be considered in the spirit of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes".[40] The deposit scheme was terminated on 7 February 1982.[41]

(3) Trade measures equivalent to exchange rate changes

There are only two known examples of trade measures equivalent to changes in the exchange rate for commercial transactions. In late 1968 Germany instituted a special 4 per cent refund on imports together with a 4 per cent turnover tax levy on exports.[42] In 1982, Uruguay imposed a 10 per cent import surcharge and a 10 per cent export rebate.[43]

(4) Trade measures enforcing permissible exchange controls: Note Ad Article XV:4

When the Preparatory Committee examined this article in its Geneva session, one delegation proposed that paragraph 1(c) of Article 28 [XIV] of the New York Draft Charter be transferred to Article 29 [XV], suggesting the following wording: "Nothing in this section is intended to preclude a Member from requiring that its exporters accept only its own currency or the currencies of any one or more members of the International Monetary Fund, as it may specify in payment for exports". The proposal stated that the provision "is misplaced in Article 28, since it does not constitute an exception to the rule of non-discrimination on quotas. As rephrased here, it is clearly an exchange matter rather than a provision involving quantitative restrictions, and would therefore belong most appropriately in Article 29".[44]

The Sub-Committee produced a new text which was approved without any changes and inserted in the Geneva Draft Charter and in the General Agreement.[45] It was, however, considered essential to include "as an official explanation of the text" the Note *Ad* paragraph 4. The second sentence of the Note covers the case mentioned in the original draft quoted above. The last sentence was inserted to meet a request of the Czechoslovak delegation. In the final Geneva draft, and also in the General Agreement text, the interpretative Note refers only to paragraph 4. At Havana the note was attached to the last paragraph (9 in the General Agreement).

(5) Relationship between paragraph 9(a) and paragraph 4

See material under paragraph 9(a), at page 441 below.

5. Paragraph 5

The Report on the "Review on the Work of the Balance-of-Payments Committee: 1970-1974" noted, *inter alia*, that the "CONTRACTING PARTIES have no authority over exchange restrictions" and that "Conclusions concerning exchange measures have been rare when viewed against the fact that most consulting countries were, at the time of the consultations, using exchange measures to control their foreign trade. Only in one case (1970 Egypt) the Committee recommended a timely reform of the exchange system, and in another (1971 Ghana) it urged the consulting country to consider liberalizing controls on profit and dividend repatriation. The Committee never decided to report on exchange measures to the Fund".[46]

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[40]BOP/R/119, adopted on 3 November 1981, C/M/152.

[41]L/5162/Add.3.

[42]L/3171, "Contribution toward Stabilization of the International Monetary System", dated 6 February 1969; see also German announcement at SR.25/9, p. 155.

[43]L/5355.

[44]EPCT/W/223, p. 35, referring to EPCT/W/216 pp. 5-6.

[45]EPCT/A/PV/41, pp. 72-76.

[46]L/4200, paras. 45-46 (referring to BOP/R/49 (Egypt) and BOP/R/53 (Ghana)).

6. Paragraph 6

(1) "within a time to be determined"

It was stated by the rapporteur of the Sub-committee on Quantitative Restrictions and Exchange Control, which drafted the corresponding Charter provisions at the London session of the Preparatory Committee that: "The Organization's functions relating to the special exchange agreement are to act in collaboration with the International Monetary Fund on all questions which may arise in the working of the agreement. And to seek and accept the opinion of the International Monetary Fund whether the action is permissible".[47] The London Report notes as follows:

> "It is generally considered appropriate that any member of the Organization, which is not also a member of the Fund, should not have full freedom in exchange matters, since by exchange arrangements it might frustrate its trade obligations. There is wide measure of agreement for the suggestion that such a member should enter into a special agreement with the Organization in exchange matters, which would provide that the purposes common to the Organization and the Fund would not be frustrated as a result of action in exchange matters by the member in question …".[48]

A Resolution of the CONTRACTING PARTIES of 20 June 1949 established the time-limit for entering into a special exchange agreement as 1 November 1949, or four months after accession, or thirty days after a contracting party ceases to be a member of the Fund.[49]

(2) "special exchange agreement"

The Working Party Report adopted on 20 June 1949 on "Text of Special Exchange Agreement and Time-limit for Acceptance" has annexed to it the text of a standard special exchange agreement as contemplated by paragraph 6 of Article XV.[50] The standard agreement provides that it will terminate on the day on which the government concerned becomes a member of the Fund or ceases to be a contracting party. In 1994 a draft special exchange agreement was circulated in the working party on accession of Chinese Taipei.[51]

Special exchange agreements were accepted in the 1950-1952 period by: Sri Lanka (Ceylon), Haiti, Indonesia, and the Federal Republic of Germany. These countries later became members of the International Monetary Fund.[52] Consequently, no special exchange agreement under Article XV is currently in force.

(3) Exceptions and derogations from paragraph 6

At the Havana Conference, Article 24 of the Charter was revised to include a paragraph to meet "the case of a country which does not use its own currency".[53] This provision does not appear in the GATT, but the case is provided for in a Resolution of 20 June 1949 by the CONTRACTING PARTIES providing that "no contracting party shall be required to enter a special exchange arrangement so long as it uses solely the currency of another contracting party and so long as neither the contracting party in question nor the country whose currency is being used maintains exchange restrictions; provided, however, that any contracting party which defers entering into a special exchange arrangement … shall thereby be deemed to have consented to consult with the CONTRACTING PARTIES at any time on their request on any exchange problem."[54]

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[47]EPCT/C.II/QR/PV/5 p. 63. See also *ibid.* p. 41-49 concerning origin and purpose of special exchange agreements in UK draft proposal on balance-of-payments measures.

[48]London Report, p. 16, para. III.C.4(f).

[49]II/17.

[50]GATT/CP.3/44, II/117-123.

[51]Spec(94)39, Spec(94)31.

[52]Sri Lanka (Ceylon): agreement at GATT/CP/53, became Fund member 29 August 1950; Haiti: special exchange agreement at GATT/CP/96, Fund membership 8 September 1953; Indonesia: special exchange agreement at GATT/CP/96, became Fund member 15 April 1954 (withdrew effective 17 August 1965, readmitted as Fund member 21 February 1967); Federal Republic of Germany: special exchange agreement at G/12, became Fund member 14 August 1952.

[53]Havana Reports, p. 101, paras. 35-36 (revision in response to proposal by Liberia).

[54]II/18.

Since 1955, *waivers* of indefinite duration were granted under Article XXV:5 relieving the following contracting parties from the obligation to become a member of the International Monetary Fund or to accept a special exchange agreement: New Zealand,[55] Czechoslovakia,[56] Indonesia,[57] and Cuba.[58] The waivers for Czechoslovakia and New Zealand were later amended to dispense with a requirement for annual consultations, due to their special nature.[59] New Zealand subsequently became a member of the International Monetary Fund, and Czechoslovakia and Indonesia resumed their memberships in the Fund.[60]

The protocols of accession of Switzerland,[61] Poland,[62] Romania,[63] and Hungary[64] each contain a *reservation to Article XV:6*. In each of these cases, the reservation was accompanied by an undertaking that, inter alia, "so long as [country] is not a member of the International Monetary Fund, it will act in exchange matters in accordance with the intent of the General Agreement and in a manner fully consistent with the principles laid down in the text of the special exchange agreement as adopted by the CONTRACTING PARTIES in their Resolution of 20 June 1949. [Country] shall report to the CONTRACTING PARTIES promptly on any action taken by it which would have been required to be reported to the CONTRACTING PARTIES had [Country] signed the special exchange agreement. [Country] shall consult with the CONTRACTING PARTIES at any time, subject to thirty days' notice, upon request of any contracting party which considers that [country] has taken exchange action which may have a significant effect on the application of the provisions of the General Agreement or is inconsistent with the principles and objectives of the special exchange agreement. If, as a result of such consultation, the CONTRACTING PARTIES find that [country] has taken exchange action contrary to the intent of the General Agreement, they may determine that the present reservation shall cease to apply and [country] shall thereafter be bound by the provisions of paragraph 6 of Article XV of the General Agreement".[65]

Each of these four contracting parties has since become a member or resumed membership in the International Monetary Fund: Switzerland on 29 May 1992, Poland on 12 June 1986, Romania on 15 December 1972, and Hungary on 6 May 1982.

7. Paragraph 8

In 1950 and 1951 the CONTRACTING PARTIES and the International Monetary Fund agreed on arrangements for "Collection of information required by Article XV:8"[66] and "Rules of procedure for direct consultation between a contracting party and the Fund"[67] applying to contracting parties which are not members of the Fund.

8. Paragraph 9

See section III below concerning the drafting history of paragraph 9.

During the Review Session in 1954, a Special Sub-Group of the Review Working Party on Quantitative Restrictions discussed the question whether Article XV:9(a), which exempts from all GATT obligations "the use ... of exchange controls ... in accordance with the Articles of Agreement of the International Monetary Fund", also relieves contracting parties of their obligation not to frustrate the General Agreement's intent through such actions. The United Kingdom proposed an interpretative note to Article XV:9(a) of the General Agreement which would resolve this issue; however, "the Group agreed that it would be preferable not to try to lay down

[55]3S/42, 6S/32.
[56]3S/43, 6S/28.
[57]14S/33.
[58]13S/23.
[59]Report of the Working Party on "Consultations under Article XII:4(b) etc.", L/769, adopted on 30 November 1957, 6S/36, 38, paras. 8-10.
[60]New Zealand: Fund membership effective 31 August 1961; Czechoslovakia: readmitted as a member of the Fund 20 September 1990, ceased to be a member 1 January 1993 (succeeded on that date by Czech Republic and Slovak Republic); Indonesia: see preceding note.
[61]Protocol for the Accession of Switzerland, 14S/6, 8, para. 5. See also L/598. Report on "Arrangements and Procedures for the Accession of Switzerland", adopted on 17 November 1956, 5S/40, 43, para. 11 concerning reasons for the Swiss reservation.
[62]Protocol for the Accession of Poland, 15S/46, 49, para. 8.
[63]Protocol for the Accession of Romania, 18S/5, 8, para. 9.
[64]Protocol for the Accession of Hungary, 20S/3, 6, para. 8.
[65]See also statement of Switzerland on this reservation at 5S/43, para. 11.
[66]I/123, proposed by the CONTRACTING PARTIES by letter dated 9 February 1951 and agreed to by the Fund by letter dated 26 March 1951.
[67]I/121, proposed by the Fund by letter dated 27 February 1950, and agreed by the CONTRACTING PARTIES by letter dated 22 May 1950.

general principles on the relationship between paragraphs 4 and 9 but to leave this question over for empirical consideration if and when particular points arose which had a bearing on it. ... They further agreed that paragraph 9(a) was not to be interpreted so as to preclude the CONTRACTING PARTIES from discussing with a contracting party the effects on the trade of contracting parties of exchange controls or restrictions imposed or maintained by that contracting party, or from reporting on these matters to the IMF (as indeed was specifically envisaged by paragraph 5 of the Article)".[68]

During the Review Session in 1954-55, Italy brought a complaint concerning action by Turkey providing export bonuses for certain agricultural products and levying special import taxes on certain goods deemed less-essential in order to provide the necessary funds for the bonuses. Italy stated that the export subsidies had not been notified as required by Article XVI:1 and that the import taxes were inconsistent with Article II:1(b). Turkey stated that as part of a reform of its foreign exchange system, it had established an Equalization Fund which was financed by the sale of import permits, and that this system had been approved by the International Monetary Fund. A representative of the Fund confirmed that the practices under question were multiple currency practices under the Fund Articles of Agreement and that in a Decision concerning Turkey the Fund had stated that it did not object to the temporary continuance of these practices and would remain in consultation with Turkey on these practices. The complaint was referred to the Panel on Complaints but was withdrawn later in the session.[69] See also the other material on multiple exchange rate practices under Article XVI in this Index.

In 1976-77, the Working Party on Italian Measures examined a deposit requirement for payments abroad, and a tax on the purchase of foreign exchange, which had been imposed by the Italian government; in accordance with Article XV, the Working Party carried out a consultation with the Fund. The Report on "Monetary Measures" prepared by this Working Party notes that the representative of the EC stressed the monetary and exchange character of the Italian measures, which were applied to all purchases of foreign exchange, whether for imports, services or other purposes. "Members of the Working Party ... noted that Italy was not invoking Article XII. They stressed the importance attached to the careful examination in the appropriate GATT body of all restrictive measures having a direct or indirect effect on trade, be these measures monetary in form or not".[70]

This view prevailed also in the Council discussion leading to the decision to hold consultations in the Balance-of-Payments Committee on the Italian deposit requirement for purchases of foreign currency which was introduced in May 1981.[71]

B. RELATIONSHIP BETWEEN ARTICLE XV AND OTHER PROVISIONS OF THE GENERAL AGREEMENT

1. Article III

The record of discussions at the Havana Conference on Article 18 of the Charter (corresponding to Article III of the General Agreement) notes the following understanding:

> "The Sub-Committee [A] considered that charges imposed in connection with the international transfer of payments for imports or exports, particularly the charges imposed by countries employing multiple currency practices, where such charges are imposed not inconsistently with the Articles of Agreement of the International Monetary Fund, would not be covered by Article 18 [III]. On the other hand, in the unlikely case of a multiple currency practice which takes the form of an internal tax or charge, such as an excise tax on an imported product not applied on the like domestic product, that practice would be precluded by Article 18. It may be pointed out that the possible existence of charges on the transfer of payments insofar as these are permitted by the International Monetary Fund is clearly recognized by Article 16 [I]."[72]

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[68]Report of the Special Sub-Group, 3S/195, 198, para. 8; text of UK proposed note appears as Annex 2 to this Report at 3S/205.

[69]L/214 (complaint); SR.9/7 (discussion of complaint, statements by Italy, Turkey and the Fund, referral to Panel on Complaints); W.9/8 (written statement by Turkey); SR.9/40 (withdrawal of complaint).

[70]L/4442, adopted on 2 March 1977, 24S/129, 131, para. 6.

[71]C/M/149.

[72]Havana Reports, p. 62, para. 39, repeating an understanding arrived at during the Geneva session of the Preparatory Committee (see EPCT/174, p. 7). See also Havana discussion of this understanding at E/CONF.2/C.3/A/W.33, p. 3. The text of Article 18 as revised at Havana was taken into the GATT; see the discussion of negotiating history in section III under Article III. Article 16 corresponded to Article I of the General Agreement.

In 1952, the standing Panel on Complaints examined a special "contribution" levied by the Greek Government on certain imported goods, which the Greek delegation stated was "a charge imposed on foreign exchange allocated for the importation of goods from abroad equivalent to a multiple currency practice" considered by the Greek Government as indispensable to cover the widening gap between the official exchange rate and the effective purchasing power of the drachma. The Report of the Panel on "Special Import Taxes Instituted by Greece" referred to the passage directly above, observing as follows:

> "... the principal question arising for determination was whether or not the Greek tax was an internal tax or charge on imported products within the meaning of paragraph 2 of Article III. If the finding on this point were affirmative, the Panel considered that it would be subject to the provisions of Article III whatever might have been the underlying intent of the Greek Government in imposing the tax ...
>
> "On the other hand, if the contention of the Greek Government were accepted that the tax was not in nature of a tax or charge on imported goods, but was a tax on foreign exchange allocated for the payment of imports, the question would arise whether this was a multiple currency practice, and, if so, whether it was in conformity with the Articles of Agreement of the International Monetary Fund. These matters would be for the determination of the International Monetary Fund. If the Fund should find that the tax system was a multiple currency practice and in conformity with the Articles of Agreement of the International Monetary Fund, it would fall outside the scope of Article III.
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> "Even if it were found that the tax did not fall within the ambit of Article III the further question might arise under Article XV:4 whether the action of the Greek Government constituted frustration by exchange action of the intent of the provisions of Article III of the General Agreement."[73]

The Panel suggested that the CONTRACTING PARTIES seek further information and inquire of the Fund whether the Greek "contribution" was a multiple currency practice, and whether it was in conformity with the Fund Articles of Agreement. This would make it possible to consider whether any question arose under Article XV:4.[74] The Greek measure in question was terminated following devaluation of the drachma in April 1953.[75]

2. Article XXIII

The Report of the Special Sub-Group on GATT/Fund Relations in the 1954-55 Review Session notes that the Sub-Group rejected as unnecessary a proposal to add a note to Article XV:9(a) confirming the right to invoke Article XXIII with respect to exchange controls or exchange restrictions which were in accordance with the IMF Articles of Agreement.[76]

3. Other GATT provisions

In addition to the broad obligations of Article XV:4 and 9, commitments relating to exchange controls and currency practices also appear in other GATT Articles including I:1; II:3 and 6; VI:2 and 3; VII:4(a) and (c); VIII:1 and 4, as well as Articles XI to XIV and XVIII:B.

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[73] G/25, adopted on 3 November 1952, 1S/48, 49-50, paras. 5, 7, 8.

[74] *Ibid.*, 1S/50-51, paras. 9-12. Concerning multiple currency practices, see also the Decision of the International Monetary Fund annexed to the Report of the Special Sub-Group on GATT/Fund Relations at 3S/200-205.

[75] SR.8/7 p. 9.

[76] L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 198, para. 8, referring to note proposed by UK reprinted at 3S/205.

C. EXCEPTIONS AND DEROGATIONS

See material on exceptions and derogations to the obligation to enter into special exchange agreements, at page 437 above.

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Corresponding provisions in the Havana Charter are contained in Article 24; in the US-UK *Proposals* in Chapter III F-5; in the US Draft in Article 23-24; in the London and New York Drafts in Article 29; and in the Geneva Draft in Article 24. The title of Charter Article 24 is "Relationship with the International Monetary Fund and Exchange Arrangements".

The US Draft Charter articles provided for ITO-IMF co-operation, and would have prohibited some exchange restrictions and all restrictions on payments and transfers for current international transactions consisting of payments due in connection with imports of any product. At London this provision was redrafted in the Sub-Committee on Quantitative Restrictions and Exchange Control, which drafted paragraphs 1, 4, 6, 7(a) and 8. At the Geneva session of the Preparatory Committee, further discussion led to insertion of the paragraphs dealing with the relationship between the ITO and the Fund and the relationship between obligations under the Charter and the Fund Articles of Agreement, paragraphs 2, 3, 5, 7(b) and 9. The Geneva Draft Charter Article and the 30 October 1947 text of the General Agreement were substantially identical except that in the Geneva Draft Charter the procedures provided for in paragraph 3 were made subject to approval by the Conference of the ITO. Paragraph 9 began: "Subject to the provisions of paragraph 4 of this Article".

During the Havana Conference, the third sentence of paragraph 2 of Article 24 was amended in the light of amendments proposed by Australia and New Zealand. The Charter text reads as follows: "When the Organization is examining a situation in the light of relevant considerations under all pertinent provisions of Article 21 [XII] for the purpose of reaching its final decision in cases ...".[77] In support of this change it was stated that "It was administratively unsound to separate responsibility for a decision from the responsibility for action arising from it. Good working relations between the IMF and the ITO would be impaired if the ITO had to adopt a decision against its judgement. The proper procedure was for any decision to be preceded by close personal consultation between the officers of the two Organizations, a consultation which would recognize the special fields of competence of each. Moreover, the respect by Members for the provisions of the Charter would be weakened if the ITO were to impose on Members a determination of the IMF with which it disagreed".[78] In addition, at Havana a sub-paragraph was added to cover the case of a country which does not use its own currency (see page 437 above). The words "whether or not it has entered into a special exchange agreement" were inserted in the paragraph relating to the provision of information by non-members of the IMF (corresponding to GATT Article XV:8). Finally, it was also agreed to delete the phrase "Subject to paragraph 4 of this Article" from the beginning of the paragraph corresponding to GATT Article XV:9, and to take the interpretative note from paragraph 4 and attach it to that paragraph.

At the Second Session, it was decided to amend paragraph 9 of Article XV to delete the phrase "Subject to paragraph 4 of this Article", to conform to the text of Article 24:8 of the Havana Charter.[79] This amendment was effected by the Protocol Amending Part II and Article XXVI, and entered into force on 14 December 1948. During the Review Session Article XV was debated together with the other balance-of-payments Articles, but was not itself revised, except for the addition in paragraph 2 of a reference to paragraph 9(a) of the revised Article XVIII.

[77]Havana Reports, p.101, para.34; E/CONF.2/11/Add.11, pp.2-3.

[78]E/CONF.2/C.3/SR.24, p.1.

[79]Report of the Working Party on "Modifications to the General Agreement", GATT/CP.2/22/Rev.1, adopted on 1 and 2 September 1948, II/39, 44, para. 28; see also Havana Reports, p. 98, para. 19.

IV. RELEVANT DOCUMENTS

London

Discussion:	EPCT/C.II/QR/PV/5 (p. 41) EPCT/C.II/PV/13 (p. 16)
Reports:	EPCT/C.II/43, 59; EPCT/30

New York

Discussion:	EPCT/C.6/21 (p. 6-7), 23
Reports:	EPCT/C.6/97/Rev.1 (p. 86)

Geneva

Discussion:	EPCT/EC/PV.2/22 EPCT/A/PV/27 (p. 20), 29 (p. 40ff), 41 (p. 64ff) EPCT/TAC/SR/11 EPCT/TAC/PV/27
Reports:	EPCT/135, 163, 171, 189, 196, 212, 214/Add.1/Rev.1 EPCT/W/313
Other:	EPCT/W/64, 216, 223, 241, 272, 279, 301, 318, 341

Havana

Discussion:	E/CONF.2/C.3/SR.23 (p. 5), 24, 25, 47
Reports:	E/CONF.2/C.3/91; E/CONF.2/11/Add.11
Other:	E/CONF.2/C.3/F/W/17, 22, 25

CONTRACTING PARTIES

Reports:	GATT/CP.2/22/Rev.1, II/39 GATT/CP/53, CP/96; G/12, G/39

Review Session

Discussion:	SR.9/14, 15
Reports:	W.9/106, 130, 174+Add.1, 208, 234, 3S/197
Other:	L/189/Add.1, L/246, L/270 W.9/18+Add.1, 22, 23, 60, 63, 73, 130, 142, 167 Spec/46/55, 53/55, 87/55 MGT/9/55