
Working Group on Trade, Debt
and Finance

**WTO PROVISIONS RELEVANT TO THE RELATIONSHIP
BETWEEN TRADE AND FINANCE AND TRADE AND DEBT**

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO

I. INTRODUCTION

1. This Note has been prepared by the Secretariat in response to a request from the Working Group at its first meeting for a factual paper on WTO provisions that might be relevant to the Group's work, taking into account any provisions identified by Members in this regard.¹
2. The importance of a well-functioning international financial system has always been a matter of priority for international trade and the multilateral trading system. It figured in the drafting of the GATT, where attention was paid to ensuring complementarity between the multilateral trade rules and the financial policy disciplines of the International Monetary Fund (IMF). It received attention in various GATT bodies, particularly in the late-1970s and early-1980s, by the (then) Contracting Parties, and it was elaborated on in several areas of the Uruguay Round negotiations.
3. The result is that provisions that might be deemed relevant to the relationship between trade and finance can be found in many WTO Agreements and related Ministerial Declarations and Decisions. These are listed and reproduced in the Annex to this Note, along with selected extracts from the Analytical Index (1995) that relate to those provisions. They are arranged by topic. The Secretariat has not been able to identify any WTO provisions that deal directly with the topic of trade and debt.
4. Two issues of particular concern have been the need for **exchange rate stability** to provide a predictable price mechanism for conducting international transactions, price-based trade policies, and trade negotiations, and the need to ensure that the rules-based trading system is not frustrated by the undisciplined use of **multiple exchange rate arrangements** or **exchange restrictions**.
5. The Articles of Agreement of the International Monetary Fund (IMF) and the provisions of the WTO are designed to complement each other in this regard, and between them to provide a coherent set of rules and disciplines for the progressive liberalisation of international trade and payments. GATT Article XV requires WTO Members to cooperate with the IMF with the aim of

¹ WT/WGTDF/M/1 and W/1. The Note will be updated in the light of delegations' comments.

pursuing a coordinated policy with regard to exchange questions and questions of quantitative restrictions and other trade measures. It also obliges WTO Members not to frustrate the intent of the GATT provisions by exchange action, nor the provisions of the IMF Articles of Agreement through trade action.

6. Other WTO provisions translate this into specific obligations. For example: GATT Article II:3 prohibits Members from altering their method of converting currencies so as to impair the value of their tariff concessions; GATT Article VII requires Members normally to use exchange rates recognized by the IMF when valuing goods for customs purposes; Article VI:2 and 3 (Ad. Note) treats multiple currency practices in certain circumstances as constituting a subsidy to exports; GATT Article XVI (Ad. Note) permits the use of multiple exchange rates in accordance with the IMF Articles of Agreement; and the Agreement on Trade-Related Investment Measures treats foreign exchange balancing requirements as a quantitative import restriction.

7. Following the second amendment of the IMF Articles of Agreement in 1978 to reflect the breakdown of the *par value* exchange rate system, adjustments to some of the GATT provisions relating to exchange rates were made by the CONTRACTING PARTIES. Since then, and notably in the Uruguay Round Agreements that contain provisions relating to the use of exchange rates, market exchange rates have been used as the point of reference. For example, in the Agreement on Agriculture, the "Guidelines for the Calculation of Tariff Equivalents" (Attachment to Annex 5:3) require Members to convert external prices to domestic currencies generally using the annual average market exchange rate for the same period as the price data; and Article II:2.4.1 of the Agreement on Implementation of Article VI of the GATT 1994 requires that currencies be converted using the rate of exchange on the date of sale, or in certain circumstances the forward exchange rate.

8. The importance of the disciplined use of exchange restrictions, as well as close institutional cooperation with the IMF, has been carried over into the GATS. Under GATS Article XI, a Member's rights and obligations are related directly to its IMF rights and obligations, including its ability to use exchange actions which are in conformity with the IMF Articles of Agreement. The GATS prohibits a Member from applying restrictions on international transfers and payments for current transactions relating to its specific commitments, and restrictions on capital transactions inconsistently with its specific commitments, other than in the context of the GATS provisions allowing restrictions to be imposed for balance-of-payments purposes, or, in the case of capital account restrictions, at the request of the IMF.

9. Provisions giving Members flexibility in meeting their trade policy obligations in the event of them encountering serious **balance-of-payments and external financial difficulties** are included in both the GATT and the GATS, as well as in the Agreements on Trade-Related Investment Measures and on Government Procurement. GATT Articles XII and XVIII:B and GATS Article XII allow a Member to impose trade restrictions to safeguard its external financial position and its balance-of-payments, subject to certain conditions. In the case of the GATS, restrictions on payments or transfers for transactions related to the Member's specific commitments are also permitted in these circumstances, subject to the restrictions being consistent with the IMF Articles of Agreement. GATT Article XV sets out the role of the IMF in relation to Members' use of these balance-of-payments provisions.

10. Trade in financial services is an important area in the WTO of interaction between trade policies and financial policies. The GATS Annex on Financial Services contains provisions that ensure a Member shall not be prevented from taking measures affecting trade in services for **prudential reasons**, or to ensure the integrity and stability of the financial system.

11. GATT Articles XXXVI:6 and XXXVIII:2(c) contain provisions that refer to the relationship between developing country Members' export earnings and their need for adequate **financial**

assistance for development to alleviate the burdens they assume in the interest of their economic development. The Uruguay Round Decision on Net-Food Importing Countries recognizes the need of least-developed and net food-importing countries for financial assistance to improve their agricultural productivity and infrastructure.

12. The Enabling Clause, and the WTO Agreements on Subsidies and Countervailing Measures and on Technical Barriers to Trade require, *inter alia*, that a developing country Member's **financial needs** be taken into account in the application of certain of their provisions, or in the case of the Enabling Clause in the context of trade negotiations.

13. The GATT contains a few provisions linking a Member's trade policy to its **tax policy**. GATT Article XXVIII *bis* requires that trade negotiations be conducted on a basis which affords adequate opportunity to take into account a Member's fiscal revenue needs. GATT Article XXXVII requires developed country Members, to the fullest extent possible, to avoid and reduce fiscal measures that hamper significantly the growth of consumption of primary products of export interest to developing countries.

14. The functioning of the international financial system, and specifically of the exchange rate system, was discussed in the GATT in the late-1970s and early-1980s as a matter of concern to Members, usually in the context of **institutional cooperation** with the IMF. One of the three issues on which the mandate of the Consultative Group of Eighteen focused was "the international adjustment process, and the co-ordination, in this context, between the GATT and the IMF". Discussions also took place in the GATT Council, and in that context in 1984 the IMF prepared a study at the request of the Contracting Parties on "Exchange Rate Volatility and World Trade". In 1984, the CONTRACTING PARTIES urged the IMF to take into account their concern about the relationship between exchange rate instability and international trade in the IMF's efforts to review the operation of the international monetary system.

15. The GATT Contracting Parties discussions on this issue fed into the drafting of the Punta del Este Declaration that launched the Uruguay Round negotiations. It contained several references to the relationship between trade and finance.

- In the Chapeau to the Declaration, Ministers declared themselves "mindful of the negative effects of prolonged financial and monetary instability in the world economy, the indebtedness of a large number of less-developed contracting parties, and considering the linkage between trade, money, finance and development;"
- Two Objectives (Part A) of the negotiations were to:
 - "increase the responsiveness of the GATT system to the evolving international economic environment, through facilitating necessary structural adjustment, enhancing the relationship of the GATT with the relevant international organisations and taking account of the importance of an improved trading environment providing, *inter alia*, for the ability of indebted countries to meet their financial obligations;"
 - foster concurrent cooperative action at the national and international levels to strengthen the inter-relationship between trade policies and other economic policies affecting growth and development, and to contribute towards continuing, effective and determined efforts to improve the functioning of the international monetary system and the flow of financial and real investment resources to developing countries;"
- In Part E, Functioning of the GATT System, where negotiations should aim to develop understandings and arrangements "to increase the contribution of the GATT to achieving greater

coherence in global economic policy-making through strengthening its relationship with other international organisations responsible for monetary and financial matters."

16. At the end of Uruguay Round, Ministers adopted the Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policy-making which called, *inter alia*, for increased cooperation with the IMF, and which has since formed the basis for the Secretariat in carrying out its work on Coherence. Reports are submitted each year by the Director General to the General Council on the Secretariat's Coherence activities.

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I. PROVISIONS RELATED TO EXCHANGE RATES

A. GENERAL AGREEMENT ON TARIFFS AND TRADE

Article II

II:3 : "No contracting party shall alter its method of determining dutiable value or of **converting currencies** so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement".

II:6(a): "The specific duties and charges included in the Schedules relating to contracting parties members of the **International Monetary Fund**, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the **appropriate currency at the par value** accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; provided that the CONTRACTING PARTIES (i.e., the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments".

Analytical Index²: Article II, para. 6(a)

"Currency at the par value accepted or provisionally recognized"

Article IV of the original Articles of Agreement of the International Monetary Fund required each member of the Fund to state a par value for its currency in terms of gold or U.S. dollars of a fixed gold value, as part of a system of fixed exchange rates. A change in the par value of a member's currency could be made only after consultation with the Fund.

As revised in 1978, Article IV of the IMF Articles no longer requires the stating of par values and instead provides that "each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates".³

"The Working Party noted that the rules for the adjustment of bound specific duties in Article II:6(a) of the General Agreement were drafted on the assumption that the members of the International Monetary Fund maintain par values for their currencies. However, under the present Articles of Agreement of the Fund, as amended on 1 April 1978, Fund members are no longer obliged to maintain par values but have the right to adopt exchange arrangements of their choice. Some Fund members have floating exchange rates, and other maintain the exchange rate against one other currency, a basket of currencies or an international unit of account. The Working Party concluded that the right to adjust specific duties in the present monetary situation could not be called into question but that the

² All references are to the Analytical Index, "Guide to GATT Law and Practice", 1995.

³ Section 4 of Article IV as revised provides that "The Fund may determine, by an 85 per cent majority of the total voting power, that international economic conditions permit the introduction of a widespread system of exchange arrangements based on stable but adjustable par values. ... Upon making such determination, the Fund shall notify members that the provisions of Schedule C [on Par Values] apply". Articles of Agreement of the International Monetary Fund, 2 UNTS 39 (1947) as amended 1 April 1978.

modalities for the application of Article II:6(a) needed to be adjusted to take into account the changes in the international monetary system".⁴

Adjustment of specific duties in accordance with paragraph 6(a)

The "Guidelines for Decisions under Article II:6(a) of the General Agreement", adopted on 29 January 1980, provide that:

"In the present monetary situation the CONTRACTING PARTIES shall apply the provisions of Article II:6(a) as set out below unless they consider that this would not be appropriate in the circumstances of the particular case, for example because it would lead to an impairment of the value of a specific duty concession ...

"If a contracting party, in accordance with Article II:6(a) of the General Agreement, requests the CONTRACTING PARTIES to concur with the adjustment of bound specific duties to take into account the depreciation of its currency, the CONTRACTING PARTIES shall ask the International Monetary Fund to calculate the size of the depreciation of its currency and to determine the consistency of the depreciation with the Fund's Articles of Agreement. ...

"The CONTRACTING PARTIES shall be deemed to have authorized the contracting party to adjust its specific duties ... if the International Monetary Fund advises the CONTRACTING PARTIES that the depreciation calculated as set out above ... is in excess of 20 per cent and consistent with the Fund's Articles of Agreement and if, during the sixty days following the notification of the Fund's advice to the contracting parties, no contracting party claims that a specific duty adjustment to take into account the depreciation would impair the value of a concession ...".⁵

The Decision provides rules for calculating the size of the depreciation, in the case of one contracting party or in the case of contracting parties members of a customs union which define their common specific duties in terms of a unit of account composed of the currencies of the members.

Article VII

VII: 4(a): "Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to **convert into its own currency** a price expressed in the currency of another country, **the conversion rate of exchange** to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the **rate of exchange** recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement".

VII:4(b): "Where no such established par value and no such recognized rate of exchange exist, the **conversion rate** shall reflect effectively the **current value of such currency** in commercial transactions".

VII:4(c): "The CONTRACTING PARTIES, in agreement with the International Monetary Fund, shall formulate rules governing the **conversion** by contracting parties of any **foreign currency** in respect of which **multiple rates of exchange** are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign

⁴ L/4858, adopted on 29 January 1980, 27S/149, 150, para. 5.

⁵ L/4938, adopted on 29 January 1980, 27S/28-29.

currencies for the purposes of paragraph 2 of this Article as an alternative to the use of par values. Until such rules are adopted by the Contracting Parties, any contracting party may employ, in respect of any such foreign currency, **rules of conversion** for the purposes of paragraph 2 of this Article which are designed to reflect effectively the value of such **foreign currency** in commercial transactions".

VII:4(d): "Nothing in this paragraph shall be construed to require any contracting party to alter the method of **converting currencies** for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable".

Analytical Index: Article VII, para. 4

Par values and conversion rates of exchange

In discussions at the Geneva session of the Preparatory Committee it was agreed that "cases in which an alteration in the rate of exchange, with or without par value, is introduced are adequately covered by paragraphs 4(a) and (b)".⁶

Article IV of the original Articles of Agreement of the International Monetary Fund required each member of the Fund to state a par value for its currency in terms of either gold or U.S. dollars of a fixed gold value, as part of a system of fixed exchange rates. A change in the par value of a member's currency could be made only after consultation with the Fund. As revised in 1978, Article IV no longer requires the stating of par values and instead provides that "each member undertakes to collaborate with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates".⁷

The present text of paragraph 4 was agreed during the Review Session of 1954-55. The Report of the Review Working Party on "Schedules and Customs Administration" notes in this connection that:

"The amendments to paragraph 4(a) and (b), to use the words 'par value as established' and 'rate of exchange recognized' by the Fund, are intended to cover certain exchange situations which are likely to arise in practice and which are not provided for in the present text. For example, in the case of Canada the established par value accepted by the Fund is no longer the effective rate, and the Fund recognizes the fluctuating rate for its own accounting purposes. This type of exchange situation will be covered by the amended text".⁸

Article IV of the IMF Articles, as revised in 1978, does not refer to "recognition" of a Fund member's rate of exchange. However, Article VII:4(b) of the General Agreement provides that "Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions".

⁶ EPCT/A/SR.40(2), p. 16; EPCT/154, p. 25 (note to para. 5).

⁷ Section 4 of Article IV as revised provides that "The Fund may determine, by an 85 per cent majority of the total voting power, that international economic conditions permit the introduction of a widespread system of exchange arrangements based on stable but adjustable par values. ... Upon making such determination, the Fund shall notify members that the provisions of Schedule C [on Par Values] apply". Articles of Agreement of the International Monetary Fund, 2 UNTS 39 (1947) as amended April 1, 1978.

⁸ L/329, adopted on 26 February 1955, 3S/205, 214, para. 18.

B. AGREEMENT ON AGRICULTURE

Attachment to Annex 5:3: "The external prices shall generally be **converted to domestic currencies** using the annual average market exchange rate for the same period as the price data".

C. AGREEMENT ON PRESHIPMENT INSPECTION

Article I

I:3: "Preshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including **currency exchange rate and financial terms**, and/or the customs classification of goods to be exported to the territory of the user Member".

Article II

II:6: "User Members shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of user Members relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and **currency exchange-rate verification purposes**, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under paragraph 21. Additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged. However, in emergency situations of the types addressed by Articles XX and XXI of GATT 1994, such additional requirements or changes may be applied to a shipment before the exporter has been informed. This assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user Members".

II:17: "User Members shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of **currency exchange rate**, on the basis of the contract between exporter and importer, the pro forma invoice and, where applicable, the application for import authorization. User Members shall ensure that **a price or currency exchange rate** that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary verification has taken place, preshipment inspection entities immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate".

- D. AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON IMPLEMENTATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Article II

II:2.4.1: "When the comparison under paragraph 4 requires a **conversion of currencies**, such conversion should be made using the **rate of exchange** on the date of sale, provided that when a sale of **foreign currency on forward markets** is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation".

- E. AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Article IX

IX:1: "Where the **conversion of currency** is necessary for the **determination of the customs value**, the **rate of exchange** to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the **current value of such currency** in commercial transactions in terms of the currency of the country of importation".

IX:2: "The **conversion rate** to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member".

- F. AGREEMENT ON TRADE –RELATED INVESTMENT MEASURES

Annex: Illustrative List

Annex:2: "TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

(b) the importation by an enterprise of products used in or related to its local production by restricting its access to **foreign exchange** to an amount related to the **foreign exchange inflows** attributable to the enterprise".

II. PROVISIONS RELATED TO MULTIPLE EXCHANGE RATES

- A. GENERAL AGREEMENT ON TARIFFS AND TRADE

Article VI

Note Ad Article VI: 2,3: "**Multiple currency practices** can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple

currency practices" is meant practices by governments or sanctioned by governments".

Article VIII

Note Ad Article VIII:1: "While Article VIII does not cover the use of **multiple rates of exchange** as such, paragraphs 1 and 4 condemn the use of exchange taxes or fees as a device for implementing **multiple currency practices**; if, however, a contracting party is using **multiple currency exchange fees for balance of payments reasons** with the approval of the International Monetary Fund, the provisions of paragraph 9 (a) of Article XV fully safeguard its position".

Article XVI

Section B-Additional Provisions on Export Subsidies

Note Ad Article XVI: " Nothing in Section B shall preclude the use by a contracting party of **multiple rates of exchange** in accordance with the Articles of Agreement of the International Monetary Fund".

Analytical Index: Article XVI, Section B: Note

Multiple exchange rates

ad Section B of Article XVI was added at the Review Session in 1954-55. The Report of the Review Working Party on "Other Barriers to Trade" notes, concerning the provisions added to Article XVI in the Review Session:

"A number of members of the Working Party were concerned as to the possible effect of the proposed additional provisions on the right of countries to use multiple exchange rates in accordance with the Articles of Agreement of the International Monetary Fund. The Working Party has therefore recommended an interpretative note to cover this case. It wishes also to record the fact that the draft provisions have been considered by the Working Party on the assumption that paragraph 9(a) of Article XV in the present Agreement will not be altered".⁹

During the Review Session, 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 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 standing Panel on Complaints but was withdrawn later in the session.¹⁰

The 1960 Report on the "Review Pursuant to Article XVI:5" provides that: "The Panel noted that some contracting parties had interpreted approval by the International Monetary Fund of multiple

⁹ L/334 and Addendum, adopted on 3 March 1955, 3S/222, 226, para. 21.

¹⁰ 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).

exchange arrangements as absolving them from the obligation to notify such arrangements under Article XVI. The Panel wished to record its view that interpretative note 1 to Section B of Article XVI was intended not to preclude the use by a country of multiple exchange rates which were approved by the International Monetary Fund, but that there was a clear obligation to notify to the CONTRACTING PARTIES multiple exchange rates which have the effect of a subsidy".¹¹

III. PROVISIONS RELATED TO EXCHANGE RESTRICTIONS

A. GENERAL AGREEMENT ON TARIFFS AND TRADE

Article XV

XV: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".

Analytical Index: Article XV, para. 1

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".¹²

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".¹³

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

¹¹ L/1160, adopted on 24 May 1960, 9S/188, 192, para. 13, Guide to GATT law and Practice: Analytical index:p.447

¹² MIN(73)1, Declaration of Ministers approved at Tokyo on 14 September 1973, 20S/19, 22, para. 7.

¹³ L/5761, adopted on 30 November 1984, 31S/15.

“Specific Duties”¹⁴ and the 1983 and 1984 Reports of the Consultative Group of Eighteen and associated Secretariat notes.¹⁵

XV: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".

Analytical Index: Article XV, para. 2

"The CONTRACTING PARTIES, in reaching their final decision"

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".¹⁶ 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.¹⁷

Application of Paragraph 2: role of International Monetary Fund

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

¹⁴ L/4858, adopted on 29 January 1980, 27S/149.

¹⁵ 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.; Guide to GATT Law and Practice: Analytical Index p. 430.

¹⁶ C/M/89, p. 7.

¹⁷ C/M/89, p. 7-8, C/M/90, pp. 2-3.

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".¹⁸

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

XV: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".

Note Ad Article XV, para. 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."

Analytical Index: Article XV, para. 4

"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.¹⁹

"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

¹⁸ 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.

¹⁹ 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.

financial or trade in character and frequently it is both”.²⁰ 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.

“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).”²¹

“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”.²²

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 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”.²³ The deposit scheme was terminated on 7 February 1982.²⁴

"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

²⁰ L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 196, para. 2.

²¹ BOP/W/51, p. 4, paras. 9-10.

²² *Ibid.*, p. 5, para. 14.

²³ BOP/R/119, adopted on 3 November 1981, C/M/152.

²⁴ L/5162/Add.3.

together with a 4 per cent turnover tax levy on exports.²⁵ In 1982, Uruguay imposed a 10 per cent import surcharge and a 10 per cent export rebate.²⁶

"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".²⁷

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.²⁸ 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).

B. GENERAL AGREEMENT ON TRADE IN SERVICES

Article XI

XI:1: "Except under the circumstances envisaged in Article XII, a member shall not apply **restrictions on international transfers and payments** for current transactions relating to its specific commitments".

XI:2: "Nothing in this Agreement shall affect the rights and obligations of the members of the **International Monetary Fund** under the Articles of Agreement of the Fund, including the **use of exchange actions** which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on **any capital transactions** inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund".

Article XVI

XVI: footnote 8: "If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border **movement of capital** is an essential part of the service itself, that Member is thereby committed to allow such **movement of capital**. If a movement of capital. If a member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in

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

²⁶ L/5355.

²⁷ EPCT/W/223, p. 35, referring to EPCT/W/216 pp. 5-6.

²⁸ EPCT/A/PV/41, pp. 72-76.

subparagraph 2(c) of Article I, it is thereby committed to allow related **transfer of capital** into its territory".

IV. PROVISIONS RELATED TO THE BALANCE-OF-PAYMENTS

A. GENERAL AGREEMENT ON TARIFFS AND TRADE

Article XII

XII:1: "Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to **safeguard its external financial position** and its **balance-of-payments**, may restrict the quantity or value of merchandise permitted to be imported".

XII: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 reserves of such contracting party or its **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".

Analytical Index: Article XII, para. 2

The report of discussions at the London session of the Preparatory Committee notes that

"There are, however, many factors to which due regard must be paid ... There may be special non-recurrent movements of funds affecting a country's reserves, a country may have special credits outside its monetary reserves which it might be expected to use to a proper extent and at a proper rate to meet a strain on its external position, a country which has high reserves may, nevertheless, have high future commitments or probable drains upon its resources to meet in the near future. All such factors will have to be taken into account in interpreting movements in a country's reserves".²⁹

Also, the report of discussions at the Havana Conference notes that

"It was the view of the Sub-Committee that the present text of Article 21 [XII] made adequate provisions for many of the considerations put forward by the delegates of Venezuela and Uruguay. ... It was pointed out that a country exporting principally a small number of products would, in like conditions, probably be considered to have need for greater reserves than a country exporting a large variety of products, particularly if the exports were exhaustible or subject to considerable fluctuations of supply or price. A country actively embarked on a programme of economic development which is raising levels of production and foreign trade would probably

²⁹ London Report, p. 13, para. (c).

then be considered to have need for greater reserves than when its economic activity was at a lower level".³⁰

XII:2(b): "Contracting parties applying restrictions under sub-paragraph (a) 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 subparagraph".

XII: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".

XII:3(d): "The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and 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) of this Article. 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".

Analytical Index: Article XII, para. 3(d)

Relationship to Paragraph 3(a)

"a contracting party may experience a high level of demand for imports"

The meaning of this provision was discussed thoroughly at Havana. As a result the provision was amplified in the Havana Charter as follows (paragraph 4(b)): "Such a Member may find that demands for foreign exchange on account of imports and other current payments are absorbing the foreign exchange resources currently available to it in such a manner as to exercise pressure on its monetary reserves which would justify the institution or maintenance of restrictions under paragraph 3 in this Article".³¹ The Interpretative Note *Ad* Article 21 of the Havana Charter provided:

"With regard to the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulation of their foreign trade, it was considered that the text of Article 21 [XII], together with the provision for export controls in certain parts of this Charter, for example, in Article 45 [XX], fully meet the position of these economies".

XII:3(e): "In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to any special external factors adversely affecting the export trade of the contracting party applying the **restrictions**".

XII:4(a): "Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures

³⁰ Havana Reports, p. 105, para. 11; see also E/CONF.2/C.3/SR.38, pp. 2-3.

³¹ E/CONF.2/C.3/82.

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".

Analytical Index: Article XII, para. 4(a)

“alternative corrective measures which may be available”

In discussions during the London session of the Preparatory Committee in 1946, it was stated that “the purpose of this paragraph as we see it is to make sure that before a member puts on import restrictions it should also adequately consider with the international organizations concerned other possible remedial measures such as exchange depreciation, exchange restrictions, special grants from the Fund, special loans from the Bank, and all this kind of thing”.³²

Article XIV

XIV: 1: "A contracting party which applies restrictions under Article XII or under Section B of Article XVIII may, in the application 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 Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV".

Analytical Index: Article XIV, para 1

“equivalent effect”

The Report of the Review Working Party on “Quantitative Restrictions” notes:

“For practical reasons, the Working Party has not tried to define the phrase ‘equivalent effect’ in paragraphs 1 and 5 of Article XIV. It agreed, however, to record their view that a contracting party which is deviating from Article XIII will not be considered to be in breach of its obligations under this paragraph if the International Monetary Fund has stated that corresponding restrictions on payments and transfers would have been authorized under the Articles of Agreement of the Fund or approved by the Fund if the contracting party in question had chosen to proceed by way of exchange restrictions rather than trade restrictions ...

“... it was pointed out that under ... paragraph 1 of the proposed new Article XIV, a contracting party could deviate from the provisions of Article XIII only in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party might at that time apply under the Articles of Agreement of the International Monetary Fund; it was understood that such restrictions could be applied only on currency grounds”³³

XIV: 5: "A contracting party shall not be precluded by Articles XI to XV, inclusive, or by Section B of Article XVIII, of this Agreement from applying quantitative restrictions:

³² EPCT/C.II/QR/PV/3 p. 26.

³³ *Ibid.*, 3S/177, paras. 28, 29, Guide to GATT Law and Practice: Analytical Index p. 420.

(a) having equivalent effect to exchange restrictions authorised under section 3 (b) of article VII of the Articles of Agreement of the International Monetary Fund.....".

Analytical Index: para. 5

Quantitative restrictions having equivalent effect to certain authorized exchange restrictions

Article VII:3(a) of the Fund Articles provides: "If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund ... shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency ...". Article VII:3(b) of the Fund Articles provides that "A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency. Subject to the provisions of Article IV and Schedule C, the member shall have complete jurisdiction in determining the nature of such limitations, but they shall be no more restrictive than is necessary to limit the demand for the scarce currency to the supply held by, or accruing to, the member in question, and they shall be relaxed and removed as rapidly as conditions permit".

No formal declaration under Article VII:3(a) has been made by the Fund, and therefore no exchange restrictions have been authorized under Article VII:3(b) of the Fund Articles of Agreement.

The Report of the Review Working Party on "Quantitative Restrictions" notes that during the Review Session, various proposals were made to amend the General Agreement to provide for joint action to restore equilibrium in the system of world trade and payments in the event that that system became seriously unbalanced, and to avoid the imposition of unnecessarily severe restrictions on international trade.³⁴ In relation to two "scarce currency" proposals, designed for a situation where some large and commercially important country might develop a persistent surplus in its balance of payments with the rest of the world, place a strain on other countries' reserves, and cause a general scarcity of its currency:

"There was general agreement in the Working Party that such a situation might arise from a variety of different circumstances and that the prime responsibility for the state of unbalance might rest either with the surplus or the deficit countries.

"It was noted that provisions are already contained in the General Agreement and also in the Articles of Agreement of the International Monetary Fund to enable consultation to take place on the measures that might appropriately be adopted to meet such situations. ...

"If the CONTRACTING PARTIES were to find that strict application of the non-discrimination provisions of Article XIII would cause an unnecessary contraction in world trade there are already provisions in the GATT and in the International Monetary Fund Agreement which could be invoked to waive temporarily the obligation imposed upon contracting parties under that Article to apply import restrictions in a non-discriminatory manner.

"First, the Fund may, if it finds a general scarcity of a currency under Article VII, Section 1, approve discriminatory measures under Article VIII, Sections 2 and 3. Certain important countries which are members of the Fund and GATT have stated that if they supported a finding under Fund Article VII, Section 1, they would also support appropriate action under Article VIII."

³⁴ See W.19/18, W.9/22, W.9/82, W.9/136, W.9/139, L/325, GATT/174.

“Secondly, Fund Article VII, Section 3, provides that if it becomes evident that the demand for a member’s currency seriously threatens the Fund’s ability to supply that currency, the Fund shall formally declare such currency scarce and such a declaration authorizes certain discriminatory limitations on the freedom of exchange operations in that currency. Although this provision has not operated in the past because the Fund’s ability to supply a currency has never been threatened, it is to be expected that when the resources of the Fund are being used to support the convertibility of currencies, any serious scarcity of a major currency would be reflected in the holdings of the Fund. These provisions of the Fund Agreement bear directly on the question of trade discrimination; for under Article XIV of the GATT, as at present drafted, a contracting party would be able to apply discriminatory quantitative restrictions having equivalent effect to exchange restrictions authorized by the Fund under Article VIII, Section 3, as well as under Article VII, Section 3(b)”.³⁵

Article XVIII:B

XVIII:8: "The contracting parties recognize that contracting parties coming within the scope of paragraph 4 (a) of this Article tend, when they are in rapid process of development, to experience **balance of payments difficulties** arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade".

XVIII:9: "In order to safeguard its **external financial position** and to ensure a **level of reserves** adequate for the implementation of its programme of economic development, a contracting party may control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported , *Provided* that the 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 **reserves** of such contracting party or its 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".

Analytical Index: paras. 8&9

The Report of the Review Working Party on “Quantitative Restrictions” notes that

“... Although all countries in balance-of-payments difficulties inevitably have a large number of problems in common and, therefore, the procedures relating to balance-of-payments restrictions are not fundamentally different, nevertheless the countries coming under Section B of Article XVIII face special additional problems which the provisions have been adjusted to meet. The Working Party has recognized that for such countries balance-of-payments difficulties will tend to be generated by development itself. In addition, paragraph 9, although modeled on paragraphs 1 and 2 of Article XII, recognizes that the reserve problem for these countries is one of the adequacy of the reserves in relation

³⁵ L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 174-176, paras. 16-17, 19-21. See also other Review Session documents on these discussions: W.9/18, W.9/22, W.9/82, W.9/136, W.9/139, L/325, GATT/174.

to their programme of economic development, that for this reason the word 'imminent' which occurs in paragraph 2(a) is inappropriate in this context, and that in order to safeguard their external position these countries may need over a period of time to control the general level of their imports in order to prevent that level from rising beyond the means available to pay for imports as the progress of development programmes creates new demands".³⁶

XVIII:10: "In applying these restrictions, the contracting party may determine their incidence 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 in the light of its policy of economic development; *Provided* that the **restrictions** are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and *Provided* further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures"

XVIII:11: "In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for **restoring equilibrium in its balance of payments** on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer justify such maintenance; *Provided* that no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section".

Interpretation under WTO: Proviso to Article XVIII:11

In India – QR, the Appellate Body rejected India's argument that in violation of the proviso to Article XVIII:11, the Panel required India to change its developmental policy. The Appellate Body stated as follows:

"... we are of the opinion that the use of macroeconomic policy instruments is not related to any particular development policy, but is resorted to by all Members regardless of the type of development policy they pursue. The IMF statement that India can manage its balance-of-payments situation using macroeconomic policy instruments alone does not, therefore, imply a change in India's development policy.

...

We believe structural measures are different from macroeconomic instruments with respect to their relationship to development policy. If India were asked to implement agricultural reform or to scale back reservations on certain products for small-scale units as indispensable policy changes in order to overcome its balance-of-payments difficulties, such a requirement would probably have involved a change in India's development policy....."³⁷

Note Ad XVIII:11: "The second sentence in paragraph 11 shall not be interpreted to mean that a contracting party is required to **relax or remove restrictions** if such relaxation or removal would thereupon produce conditions justifying the

³⁶ L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 183, para. 44.

³⁷ Appellate Body Report on *India – QR*, paras. 126 and 128.

intensification or institution, respectively, of restrictions under paragraph 9 of Article XVIII".

Analytical Index: Note Ad Article XVIII, para. (11)

In *India – QR*, rejecting the India's argument that the Panel erred in interpreting the term "thereupon" contained in the Note Ad Article XVIII:11, the Appellate Body stated as follows:

"We agree with the Panel that the Ad Note, and, in particular, the words 'would thereupon produce', require a *causal link of a certain directness* between the removal of the balance-of-payments restrictions and the recurrence of one of the three conditions referred to in Article XVIII:9. As pointed out by the Panel, the Ad Note demands more than a mere possibility of recurrence of one of these three conditions and allows for the maintenance of balance-of-payments restrictions on the basis only of clearly identified circumstances. In order to meet the requirements of the Ad Note, the probability of occurrence of one of the conditions would have to be clear.

We also agree with the Panel that the Ad Note and, in particular, the word 'thereupon', expresses a *notion of temporal sequence* between the removal of the balance-of-payments restrictions and the recurrence of one of the conditions of Article XVIII:9. We share the Panel's view that the purpose of the word 'thereupon' is to ensure that measures are not maintained because of some distant possibility that a balance-of-payments difficulty may occur.

...

We recall that balance-of-payments restrictions may be maintained under the Ad Note if their removal or relaxation would thereupon produce: (i) a threat of a serious decline in monetary reserves; (ii) a serious decline in monetary reserves; *or* (iii) inadequate monetary reserves. With regard to the first of these conditions, we agree with the Panel that the word 'thereupon' means 'immediately'.

...

We agree with the Panel that it would be unrealistic to require that [the two other conditions, i.e.] a serious decline or inadequacy in monetary reserves should actually occur within days or weeks following the relaxation or removal of the balance-of-payments restrictions. The Panel was, therefore, correct to qualify its understanding of the word 'thereupon' with regard to these two conditions. While not explicitly stating so, the Panel in fact interpreted the word 'thereupon' for these two conditions as meaning 'soon after'. This is also one of the possible dictionary meanings of the word 'thereupon'. We are of the view that instead of using the word 'immediately', the Panel should have used the words 'soon after' to express the temporal sequence required by the word 'thereupon'. ...³⁸

XVIII:(12a): "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".

³⁸ Appellate Body Report on *India – QR*, paras. 114-115, 117 and 119.

Analytical Index: Article XVIII, para. 12a

Balance-of-payments measures other than quantitative restrictions

The Committee on Legal and Institutional Framework, which prepared the text of Part IV, recommended an amendment to Section B of Article XVIII to permit a less-developed contracting party to use temporary import surcharges, in place of quantitative restrictions, to safeguard its balance of payments.³⁹ This Recommendation was referred to the Committee on Trade and Development which considered the question in an Ad Hoc Group on Legal Amendments during 1965/1966.⁴⁰

The Report of the Balance-of-Payments Committee on its work during the years 1970-1974 discusses the treatment of balance-of-payments surcharges during that period.⁴¹

The 1979 "Declaration on Trade Measures taken for Balance-of-Payments Purposes" provides, *inter alia*: "The procedures for examination stipulated in Articles XII and XVIII shall apply to all restrictive import measures taken for balance-of-payments purposes. ... The provisions of this paragraph are not intended to modify the substantive provisions of the General Agreement".⁴² However, paragraph 2 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 provides, *inter alia*: "It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied by a Member in excess of the duties inscribed in the Schedule of that Member."

B. GENERAL AGREEMENT ON TRADE IN SERVICES

Article XII

XII:1: "In the event of **serious balance-of-payments** and **external financial difficulties** or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on **the balance of payments** of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of **financial reserves** adequate for the implementation of its programme of economic development or economic transition".

XII:5(e): "In consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to **foreign exchange, monetary reserves and balance of payments**, shall be accepted and conclusions shall be based on the assessment by the Fund of the **balance-of-payments and the external financial situation** of the consulting Member".

C. UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Application of Measures

para. 1: "Members confirm their commitment to announce publicly, as soon as possible, time-schedules for the removal of **restrictive import measures taken for**

³⁹ L/2281, para.7 and Annex II; L/2297, para. 6.

⁴⁰ 13S/76; 14S/141.

⁴¹ L/4200.

⁴² L/4904, adopted on 28 November 1979, 26S/205, 206, para. 1.

balance-of-payments purposes. It is understood that such time-schedules may be modified as appropriate to take into account changes in **the balance-of-payments situation.** Whenever a time-schedule is not publicly announced by a Member, that Member shall provide justification as to the reasons therefor".

para. 2: "Members confirm their commitment to give preference to those **measures** which have the least disruptive effect on trade. Such measures (referred to in this Understanding as "price-based measures") shall be understood to include **import surcharges, import deposit requirements or other equivalent trade measures** with an impact on the price of imported goods. It is understood that, notwithstanding the provisions of Article II, **price-based measures taken for balance-of-payments purposes** may be applied by a Member in excess of the duties inscribed in the Schedule of that Member. Furthermore, that Member shall indicate the amount by which the price-based measure exceeds the bound duty clearly and separately under the notification procedures of this Understanding".

para. 3: "Members shall seek to avoid the imposition of **new quantitative restrictions for balance-of-payments purposes** unless, because of a critical balance-of-payments situation, price-based measures cannot arrest a **sharp deterioration in the external payments position.** In those cases in which a Member applies quantitative restrictions, it shall provide justification as to the reasons why price-based measures are not an adequate instrument to deal with the **balance-of-payments situation.** A Member maintaining quantitative restrictions shall indicate in successive consultations the progress made in significantly reducing the incidence and restrictive effect of such measures. It is understood that not more than one type of restrictive import measure taken for balance-of-payments purposes may be applied on the same product".

para. 4: "Members confirm that **restrictive import measures taken for balance-of-payments purposes** may only be applied to control the general level of imports and may not exceed what is necessary to address the **balance-of-payments situation.** In order to minimize any incidental protective effects, a Member shall administer restrictions in a transparent manner. The authorities of the importing Member shall provide adequate justification as to the criteria used to determine which products are subject to restriction. As provided in paragraph 3 of Article XII and paragraph 10 of Article XVIII, Members may, in the case of certain essential products, exclude or limit the application of surcharges applied across the board or other measures applied for balance-of-payments purposes. The term "essential products" shall be understood to mean products which meet basic consumption needs or which contribute to the Member's effort to improve its **balance-of-payments situation,** such as capital goods or inputs needed for production. In the administration of quantitative restrictions, a Member shall use discretionary licensing only when unavoidable and shall phase it out progressively. Appropriate justification shall be provided as to the criteria used to determine allowable import quantities or values".

Note 1: "Nothing in this understanding is intended to modify the rights and obligations of Members under Articles XII or XVIII:B of GATT 1994. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of restrictive import measures taken for **balance-of-payments purposes**".

D. 1979 DECLARATION ON "TRADE MEASURES TAKEN FOR BALANCE-OF-PAYMENTS PURPOSES"

1979:2: "If, notwithstanding the principles of this Declaration, a developed contracting party is compelled to apply restrictive **import measures for balance-of-payments purposes**, it shall, in determining the incidence of its measures, take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties".⁴³

E. AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

Article IV

IV: "A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Article III and XI of GATT 1994".

F. AGREEMENT ON GOVERNMENT PROCUREMENT

Article V

V:1(a): " Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, **financial and trade needs** of developing countries, in particular least-developed countries, in their need to:

(a) **safeguard their balance-of-payments position** and ensure a level of reserves adequate for the implementation of programmes of economic development;

..... "

V. PROVISIONS RELATED TO FINANCIAL SERVICES

A. GENERAL AGREEMENT ON TRADE IN SERVICES

Annex on Financial Services

1(b): "For the purposes of subparagraph 3(b) of Article I of the Agreement. "services supplied in the exercise of governmental authority" means the following:

(i) activities conducted by a **central bank or monetary authority** or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the **financial resources** of the Government".

⁴³ 26S/206, 207; for background to this provision see, *e.g.*, Report of the Working Party on "United States Temporary Import Surcharge", L/3573, adopted on 16 September 1971, 18S/212, 220-223, paras. 34-38, 40.

2(a): "Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for **prudential** reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the **integrity and stability of the financial system**. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement".

3(a): "A Member may recognize **prudential measures** of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously".

VI. PROVISIONS RELATED TO FINANCIAL ASSISTANCE FOR ECONOMIC DEVELOPMENT

A. GENERAL AGREEMENT ON TARIFFS AND TRADE

Article XXXVI

XXXVI:6: "Because of the chronic deficiency in the export proceeds and other **foreign exchange earnings** of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development".

Article XXXVIII

XXXVIII:2(c): " In particular, the CONTRACTING PARTIES shall:

.....

c) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining **trade and aid relationships** with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connection, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation **to financial assistance** for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;

....."

B. AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Article XXVII

XVII:4: "Any developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies, and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining **all the relevant economic, financial and development needs** of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period".

C. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Article XII

XII:2: "Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the **special development, financial and trade needs of developing country** Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements".

XII:3: "Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of **the special development, financial and trade needs of developing country Members**, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members".

XII:4: "Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to **their development, financial and trade needs.**"

XII:9: "During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their

efforts in this direction, developed country Members shall take account of the special needs of the former in regard to **financing, trade and development**."

D. AGREEMENT ON IMPORT LICENSING PROCEDURES

Article I

I:2: "Members shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the **economic development purposes and financial and trade needs of developing country Members**".

Article III

III:5(a): "Members shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning:

- (i) the administration of the restrictions;
- (ii) the import licences granted over a recent period;
- (iii) the distribution of such licences among supplying countries;
- (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or **financial burdens** on this account;
- (b) "

E. AGREEMENT ON GOVERNMENT PROCUREMENT

Article V

V:5: "After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to **its development, financial and trade needs**, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter".

V:14: "The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to **the development, financial and trade situation of the developing countries concerned**, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended".

F. DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES

para. 3: "Ministers accordingly agree to establish appropriate mechanisms to ensure that the implementation of the results of the Uruguay Round on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries, especially least-developed and net food-importing developing countries. To this end Ministers agree:

(i)

(iii) to give full consideration in the context of their aid programmes to requests for the provision of technical and **financial assistance** to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure".

para. 5: "Ministers recognize that as a result of the Uruguay Round certain developing countries may experience **short-term difficulties in financing normal levels of commercial imports** and that these countries may be eligible to draw on the resources of **international financial institutions** under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such **financing difficulties**.....".

G. DECISION OF 28 NOVEMBER 1979: DIFFERENTIAL AND MORE FAVOURABLE TREATMENT RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES

para. 3: "Any differential and more favourable treatment provided under this clause:

(a)

(c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to **the development, financial and trade needs of developing countries** shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries".

para. 5: "The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual **development, financial and trade needs**.

Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's **development, financial and trade needs**".

para. 6: "Having regard to the special economic difficulties and the particular **development, financial and trade needs of the least-developed countries**, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems".

para. 8: "Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their **special economic situation and their development, financial and trade needs**".

VII. PROVISIONS RELATED TO FISCAL REVENUE MEASURES

A. GENERAL AGREEMENT ON TARIFFS AND TRADE

Article III

Ad Article III:1: "The application of paragraph 1 to internal taxes imposed by local governments and authorities with the territory of a contracting party is subject to the provisions of the final paragraph of Article XXIV. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article III, are not in fact inconsistent with its spirit, if such repeal would result in a **serious financial hardship** for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article III, the term "reasonable measures" would permit a contracting party to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties".

Article XXVIII bis

Ad Article XXVIII bis:1: "It is understood that the reference to **fiscal needs** would include the revenues aspect of duties and particularly duties imposed primarily for revenue purpose, or duties imposed on products which can be substituted for products subject to revenue duties to prevent the avoidance of such duties."

Article XXXVII

XXXVII:1(c): "The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible - give effect to the following provisions:

a)

c) (i) refrain from imposing **new fiscal measures**, and

(ii) in any adjustments of **fiscal policy** accord high priority to the reduction and elimination of **fiscal measures**, which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products".

Analytical Index: Article XXXVII, para. 1

refrain from introducing"; "refrain from imposing"; "products ... of particular export interest to less-developed contracting parties"

Trade measures taken for balance-of-payments purposes

The Report of the 1971 Working Party on "United States Temporary Import Surcharge" includes the following paragraphs:

"A number of representatives of developing countries said that they could not accept the United States contention that exemption from the surcharge for exports of developing countries could be construed as discrimination, impermissible under the General Agreement. Article XXXVII clearly established that, in the absence of compelling reasons, developed contracting parties must abstain from introducing or increasing tariff or non-tariff barriers vis-à-vis developing countries. They did not consider that the United States had advanced compelling reasons since there could be no serious economic effects for the United States in exempting developing countries from the surcharge. They, therefore, drew the conclusion that Article XXXVII was not being respected and stressed the fundamental importance to developing countries of this Article - the sole commitment of developed countries towards developing countries. In the view of some of these delegations, this Article should be considered as being parallel in application to other Articles in the GATT. Moreover, they considered that the surcharge was inconsistent with current trends in international co-operation, as exemplified by the Generalized System of Preferences and with recent developments in other international organizations.

"The representative of the United States drew attention to the fact that Article XXXVII provided for a standstill only as regards 'products' of export interest to developing countries and stated that the United States had endeavoured to exempt such products from the surcharge by the exclusion of duty-free items. He further stated that it was neither possible nor proper to identify those countries that were 'responsible' for the balance-of-payments difficulties and to exclude all others from the operation of the surcharge."⁴⁴

The 1976 Secretariat Note on the application of Part IV states:

"During the review of the application of Part IV in the Committee on Trade and Development in 1968/69, some developing countries have mentioned that import surcharges and import deposit schemes when introduced or maintained by developed countries should not be applied to imports from developing countries in the light of the provisions of Part IV. Developed countries which had resorted to such measures for balance-of-payments reasons stated that they had endeavoured to abide by the obligations assumed by them under Part IV and had given special consideration to the interests of developing countries. For example, some developed countries had exempted from import deposit or surcharge schemes, raw materials and certain semi-finished products which constituted a substantial share in the exports of developing countries to their markets. It was, however, not possible for them to consider complete exemption from such schemes of imports from developing countries as this would weaken the effectiveness of the measures taken and might thus necessitate emergency measures being

⁴⁴ L/3573, adopted on 16 September 1971, 18S/212, 221-222, para. 37-38.

continued for a longer period ... It may be mentioned that one country exempted from its import surcharge imports entering under its Generalized System of Preferences.”⁴⁵

Fiscal measures

The Conclusions and Resolutions adopted by Ministers on 21 May 1963, include, *inter alia*:

“Industrialized countries shall progressively reduce internal charges and revenue duties on products wholly or mainly produced in less-developed countries with a view to their elimination by 31 December 1965.”⁴⁶

The 1970 Report of the Working Party on “Border Tax Adjustments” notes that

“Members from developing countries drew attention to the Ministerial Conclusions of 1963 and Article XXXVII of the GATT, which stressed that developed contracting parties should endeavour to suppress taxes on products imported essentially from developing countries ... Representatives of developed countries considered that a distinction should be made between internal charges of a general application and selective or specific taxes, since many of the taxes imposed such as cumulative turnover taxes and the tax on value added affected all products and were, in their view, not covered by Article XXXVII:1(c), which refers to fiscal measures applied specifically to those products in raw or processed form wholly or mainly produced in the territories of developing contracting parties. Representatives of developing countries pointed out that in the process of change-over to [value-added taxes], selective excise taxes were replaced by general consumption taxes. They therefore considered that the provisions of Article XXXVII:1(c) were applicable.”⁴⁷

VIII. PROVISIONS RELATED TO INSTITUTIONAL ISSUES

A. DECLARATION ON THE CONTRIBUTION OF THE WORLD TRADE ORGANIZATION TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICY-MAKING

para. 2: “Successful cooperation in each area of economic policy contributes to progress in other areas. **Greater exchange rate stability**, based on more orderly underlying economic and financial conditions, should contribute towards the expansion of trade, sustainable growth and development, and the correction of external imbalances. There is also a need for an adequate and timely flow of concessional and non-concessional **financial and real investment resources** to developing countries and for further efforts to address **debt problems**, to help ensure economic growth and development. Trade liberalization forms an increasingly important component in the success of the adjustment programmes that many countries are undertaking, often involving significant transitional social costs. In this connection, Ministers note the role of the World Bank and the IMF in supporting adjustment to trade liberalization, including support to net food-importing developing countries facing short-term costs arising from agricultural trade reforms”.

para. 5: “The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The World Trade Organization should

⁴⁵ COM.TD/W/239, p. 14, para. 36 (for exemption of GSP products see the Working Party Report on “Danish Temporary Import Surcharge”, L/3648, adopted on 12 January 1972, 19S/120, 125-126, 129-130, paras. 18, 22, 41, 42).

⁴⁶ 12S/36, 37, para. (vi).

⁴⁷ L/3464, adopted on 2 December 1970, 18S/97, 105, paras. 29, 30.

therefore pursue and develop cooperation with the international organizations responsible for **monetary and financial matters**, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further invite the Director-General of the WTO to review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policy-making".

B. DECLARATION ON THE RELATIONSHIP OF THE WORLD TRADE ORGANIZATION WITH THE INTERNATIONAL MONETARY FUND

para. 1: "Noting the close relationship between the CONTRACTING PARTIES to the GATT 1947 and the **International Monetary Fund**, and the provisions of the GATT 1947 governing that relationship, in particular Article XV of the GATT 1947;"

para. 2: "Recognizing the desire of participants to base the **relationship of the World Trade Organization with the International Monetary Fund**, with regard to the areas covered by the Multilateral Trade Agreements in Annex 1A of the WTO Agreement, on the provisions that have governed the relationship of the CONTRACTING PARTIES to the GATT 1947 with the International Monetary Fund;"

para. 3: "Hereby *reaffirm* that, unless otherwise provided for in the Final Act, the relationship of the WTO with the International Monetary Fund, with regard to the areas covered by the Multilateral Trade Agreements in Annex 1A of the WTO Agreement, will be based on the provisions that have governed the relationship of the CONTRACTING PARTIES to the GATT 1947 with the International Monetary Fund."
