Chapter 5

QUANTITATIVE RESTRICTIONS

GATT stands for non-discrimination, multilateralism and the expansion of world trade. Quantitative restrictions by their very nature are incompatible with these basic principles of the GATT. (1) Article XI of the General Agreement provides for the general elimination of quantitative restrictions:

No prohibitions or restrictions other than taxes, duties or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party. (2)

The General Agreement provides a number of exceptions to the general provision eliminating quantitative restrictions. Firstly, export restrictions or prohibitions can be applied temporarily to prevent or relieve critical shortages of foodstuffs or other products which are essential to the exporting contracting party. (3) Provision relating to foodstuffs is meant to prevent a famine or to check a substantial rise in the domestic prices of foodstuffs caused by a shortage of these abroad. This is very essential for the sustenance of human lives in the exporting country. In addition to foodstuffs, this exception covers other products essential to the exporting contracting


(2) Article XI, 1.

(3) Article XI, 2a.
party. (4) The scope of this part of the exception is not very clear. "Other products" may include any commodity which is essential for the economy. It can include all the primary products and semi-manufactured goods essential for domestic industries and all the industrial goods essential for the consumers.

Secondly, import and export prohibitions or restrictions can be instituted if these are necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade. (5)

Thirdly, import restrictions can be imposed on any agricultural or fisheries products, imported in any form, which are necessary to the enforcement of governmental measures. (6) The term 'in any form' in this paragraph covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh products and if freely imported, would tend to make the restriction on the fresh products ineffective. (7) This clause contemplates three types of governmental measures:

1) those restricting the quantities of the like domestic products permitted to be marketed or produced; in case the domestic production of the like product is not substantial, the rule shall apply to the domestic product for which the imported product can be directly substituted; or

(4) The scope of this part of the exception is not very clear. "Other products" may include any commodity which is essential for the economy. It can include all the primary products and semi-manufactured goods essential for domestic industries and all the industrial goods essential for the consumers.

(5) Article XI, 2b.

(6) Article XI, 2c.

(7) Article XI, 2c.
2) those removing a temporary surplus of the like product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; in case the domestic production of the like product is not substantial, the rule will apply to a domestic product for which the imported product can be directly substituted; or

3) those restricting the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity; the rule will apply only if the domestic production of the commodity is relatively negligible.

This exception is essential for the success of domestic price support programmes. Domestic programmes visualising a rise in the prices of agricultural products through restriction of their production or sale might be defeated by a rush of imports if these are not controlled. In case imports are not controlled, restriction of domestic production or sale will be offset by increased imports and the prices will fail to rise. This escape provision is beneficial not only for the country applying restrictions but also for other countries. Restriction of domestic production prevents the emergence of surpluses which will depress not only domestic but world prices, too. Restriction of imports is permitted subject to the condition that domestic production is curtailed. It was agreed that the term 'restricted' in sub-paragraph (2c) will be interpreted to mean that the measures of domestic restriction must be effective in keeping domestic output below the level which would obtain in the absence of restrictions. (8) In case the restrictions on domestic production are not effective, the restrictions on imports will

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be unjustified. Restrictions without effective curtailment of domestic production will be sheer protectionism. It will deprive the exporters of their share of the market without any benefit accruing to them. As a safeguard against the misuse of the exception, the General Agreement lays down two conditions. Firstly, any contracting party applying import restrictions under sub-paragraph 2(c) is required to give public notice of the total quantity or value of the product permitted to be imported during a specified future period. Similar notice will also be given of any change in the quantity or value. Secondly, any restriction instituted under 2(c)(i) should not reduce the ratio between imports and domestic production below that which is likely to prevail in the absence of restrictions. This ratio should be determined with due regard to the proportion prevailing during a previous representative period and the special factors which may have affected or may be affecting the trade in the concerned product. The term 'special factors' includes changes in relative productive efficiency as between domestic and foreign producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Agreement. (9)

Havana Charter provides two additional safeguards to this exception. Firstly, restrictions can be applied only so long as the government measures mentioned in sub-paragraph 2(c) remain in force and if these are applied to the import of products whose domestic supplies are available during only a part of the year, these should permit the import of products in quantities

(9) Ad. Article XI, para 2.
sufficient to satisfy the demand for current consumption purposes during those periods of the year when the like domestic products, or domestic products for which the imported product can be directly substituted, are not available. (10) Secondly, any member intending to employ such restrictions shall give notice in writing, as far in advance as practicable, to the Organisation and members having a substantial interest in the supply of that product, in order to avoid an unnecessary damage to the exporting country and to provide these countries an adequate opportunity for consultation in accordance with the relevant Charter provisions. (11)

A suggestion was made that the scope of paragraph 2(c) should also include industrial products. It was pointed out, however, that the problems of small producers requiring a certain degree of state intervention are peculiar to agriculture and fisheries and the industrial producers who are generally well organised do not suffer from the same disadvantage. (12)

An important case which arose under Article XI relates to the United States import restrictions on dairy products. Under Section 104 of the United States Defence Production Act, the United States Government imposed restrictions on the importation of a number of dairy products. These nullified or impaired concessions granted by the United States to other contracting parties within the meaning of Article X:III and infringed upon the provisions of Article XI of the General Agreement. A number of contracting parties indicated that they have suffered serious

(10) Havana Charter, Article 20, 3(a).
(11) Havana Charter, Article 20, 3(b).
damage as a result of this nullification or impairment and that the circumstances are serious enough to justify a recourse to paragraph 2 of Article XXIII. The United States Government stated that it was determined to seek repeal of Section 104 of the United States Defence Production Act. In view of this, without prejudice to the right of any contracting party under paragraph 2 of Article XXIII, the Contracting Parties resolved to request the United States Government to report to them on the action taken by it. (13) Simultaneously, the Government of Netherlands was authorised to suspend the application to the United States of their obligations under the General Agreement to the extent necessary to impose an annual upper limit of 60,000 metric tons on import of wheat flour from the United States.

Restrictions to Safeguard the Balance of Payments

An important exception to the general elimination of quantitative restrictions envisaged in para 1 of the Article XI is the permission to employ restrictions to safeguard the balance of payments. At the time the General Agreement was negotiated, majority of the negotiating countries were employing quantitative restrictions for balance of payments purposes. Quantitative restrictions are indispensable for countries suffering from a serious disequilibrium in their balance of payments if these are to be saved from bankruptcy. No country can afford to continuously lose its gold and foreign exchange reserves. The General Agreement provides that import restrictions instituted, maintained or

(13) GATT, Basic Instruments and Selected Documents (Geneva, 1952) 11, 16-17.
intensified by any contracting party should not exceed those necessary to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or to achieve a reasonable rate of increase in its reserves in case of a contracting party with very low monetary reserves. (14) The phrases 'imminent threat,' 'serious decline' and 'reasonable rate' are very vague and can be interpreted broadly. The provision is liberal enough in so far as it permits restrictions not only to cure a deficit in the balance of payments that has already occurred but also to forestall its occurrence. It permits restrictions not only to prevent a decline in monetary reserves but also to achieve a reasonable rate of increase in reserves of the members whose reserves are very low. It may be pointed out that the decline in monetary reserves may not always be a correct criterion of a strain on the balance of payments. Ragnar Nurkse refers to a situation in the United Kingdom during the period 1925-30, when there existed a strain on the balance of payments without a deficit in the balance of payments and without an outflow of gold. During this period the equilibrium in the balance of payments was achieved with mass unemployment and depressed business conditions. (15) To cope with such situations restrictions are permitted not only to cure an actual but also to forestall an imminent deficit in the balance of payments.

The Articles of the General Agreement do not refer to the cause of the decline in monetary reserves. If the decline in

(14) Article XII, 2(a).

reserves is owing to the export of capital, the Articles of the
Fund permit exchange control to prevent capital movements. If the
cause is an overvalued exchange rate, it will be more appropriate
to adjust the exchange rate than to institute import restrictions.
If the cause is mal-adjustments in the production pattern of the
country, it will be better to rectify the mal-adjustments in the
production pattern than to impose import restrictions. Import
restrictions, however, may be essential if the transitional period
of adjustment is long enough. But the causes of a decline in
monetary reserves are often so numerous and so complex that it is
not easy to precisely determine these. For illustration, before
a decline in reserves can be labelled as that caused by an incorrect
exchange rate, the correct exchange rate will have to be determined.
It is almost impossible to determine the correct exchange rate.
Professor Gustav Cassel expounded the purchasing-power parity
theory to determine the correct rate of exchange. The defects of
this theory are too well known to require any discussion here.
Under these circumstances, it was somewhat unavoidable for the
contracting parties to permit quantitative restrictions to
safeguard a decline in monetary reserves, whatever may be its
cause. In addition, if the cause is the pursuit of certain
domestic policies (say, employment policy or development policy),
the contracting parties may not like any outside intervention in
their domestic affairs.

Nor do the Articles refer to the nature of decline in
monetary reserves viz. whether it is temporary or lasting. In
case the decline is temporary and the country is expected to
recover soon, it will be better to avail of the credit facilities
provided by the International Monetary Fund than to institute import restrictions.

The Articles of the General Agreement do not lay down the volume of monetary reserves which may be considered to be adequate for a contracting party. In fact, this is not possible. The need for reserves differs from country to country depending upon its circumstances. What is possible is to lay down the general principles in the light of which a country's need for reserves should be appraised. Paragraph 2(a) provides that in appraising the reserves of a contracting party, due regard shall be paid to any special factors which may be affecting the reserves or the need for reserves, including the special external credits or other resources available to it and the need to provide for appropriate use of such credits or resources. The following may be mentioned among the important factors which should be kept in view in determining the adequacy of the monetary reserves of a contracting party:

1. **Volume of Trade.** The need for reserves will vary according to the volume of the country's trade. Countries having larger trade will require larger reserves.

2. **Degree of Fluctuations in Export Proceeds and Import Expenditure.** Countries whose export proceeds fluctuate violently will require larger reserves to meet import needs during periods of low export proceeds. A country whose export proceeds are stable over time can do with small reserves without any difficulty. The fluctuations in export proceeds may arise either from the fluctuations in prices or production of exports. It is well known that export proceeds of the primary producing
countries fluctuate more than those of the industrial countries. Similarly, countries whose import expenditure fluctuates violently will require larger reserves as compared with countries whose import expenditure is comparatively stable.

(3) Secular Trend of Export Proceeds and Import Expenditure. Countries with a rising trend of export proceeds will require smaller reserves whereas countries with a falling trend of export proceeds will require larger reserves if the adjustment between the export proceeds and import expenditure is not to be very painful. Similarly, countries with rising import expenditure will require larger reserves and those with falling import expenditure smaller reserves.

(4) Domestic Policies. A country intending to pursue a development programme with a high import content will need large reserves. Similarly, a country pursuing a full employment policy will require substantial reserves to meet strains on the balance of payments during periods of recession when the demand for its exports falls in the outside countries while its demand for exports of the outside world remains constant owing to the pursuit of a full employment policy.

(5) Special Credit Facilities and the Availability of other resources. Countries having access to special credit facilities which are not available to others will require comparatively smaller reserves. Similarly, countries possessing external resources, such as commercial bank balances, unutilised external credits etc., will require comparatively smaller reserves.
(6) **Attitude and Psychology of the Foreign Exchange Markets.**

If the market is suspicious about the ability of the monetary authorities to maintain a particular rate of exchange, there may ensue speculative movements of funds increasing the pressure on monetary reserves. Under these conditions, the level of adequate monetary reserves will be higher than when there exist no doubts about the ability of the monetary authorities to maintain the exchange rate.

(7) **Length of the Transitional Period.** Reserves are required to serve as a stop-gap arrangement during the transitional period when the corrective action is being taken. The more effective the corrective weapons available to a country and the greater the willingness and ability of the government to apply these, the smaller will be the need for reserves. (16) A country which can immediately stimulate exports and/or restrict imports will require very small reserves. Similarly, on capital account, the smaller the amount of balances owned by foreigners, and the greater the difficulties in withdrawing these, the smaller will be the need for reserves.

It may be mentioned that holding of excessive reserves entails a cost to the holding country because meanwhile these are not used for productive purposes. The country can raise its income by making an active use of these. Inadequate reserves, however, may prove even more costly. If a country's reserves are inadequate, other countries may not have confidence in the stability

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of its currency, the consequences of which can be disastrous. Countries, therefore, should aim at maintaining an optimum level of reserves i.e. reserves which are neither excessive nor inadequate.

Who is to appraise the adequacy of monetary reserves?
Para 2 of Article XV provides that in finally deciding 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, the Contracting Parties shall accept the determination of the International Monetary Fund.

In the application of import restrictions, the contracting parties are permitted to practise discrimination between different products or classes of products in such a way as to give priority to the importation of those products which are more essential. (17) This provision discriminates against the countries exporting the inessential and luxury goods.

The Agreement contains a number of provisions to guard against the misuse of the restrictions for balance of payments purposes. The contracting parties are required to eliminate restrictions as soon as the conditions visualised in para 2 do not justify their maintenance and to progressively relax these as the conditions improve. (18) They undertake, in carrying out their domestic policies, to pay due attention 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. They recognise

(17) Article XII, 2(b).
(18) Article XII, 2(a).
the desirability of adopting measures which expand rather than contract trade. (19) The contracting parties shall not apply restrictions in a way which unnecessarily damages the commercial or economic interests of any other contracting party, or which unreasonably prevents the importation of any description of goods in minimum commercial quantities, the exclusion of which would impair regular channels of trade, or which prevents the importation of commercial samples or compliance with patent, trade mark, copyright, or similar procedures.

Any contracting party instituting new restrictions or intensifying the existing restrictions is immediately required to consult the contracting parties as to the nature of its balance of payments difficulties, alternative methods of correcting them, and the possible effect of these on the economies of other contracting parties. (20) If circumstances permit, the contracting party should consult before applying the measures. This provision is meant to find out if certain other less injurious solutions are available. The Contracting Parties shall review all restrictions applied under this article on a date to be decided by them. After that the contracting parties applying import restrictions shall annually hold consultations similar to those provided in para 4(a) with the Contracting Parties. If in course of such consultations with a contracting party, the Contracting Parties find that the restrictions are inconsistent with the relevant provisions, they shall point out the nature of the

(19) Article XII, 3.

(20) Article XII, 4.
inconsistency and may advise suitable modifications. If the consultations lead the contracting parties to determine that the restrictions are inconsistent with the relevant provisions and are injurious to any contracting party, they will inform the contracting party applying restrictions and recommend suitable modifications to bring the restrictions in conformity with the provisions of the Agreement within a specified period of time; the Contracting Parties are authorised to release the adversely affected contracting party from such obligations under the Agreement towards the party applying restrictions as they decide to be appropriate under the circumstances.

The consultations on balance of payments restrictions are meant to guard against the abuse of the provisions and to ensure that the damage to the interests of the other contracting parties is reduced to the minimum. (21) These, on country-by-country basis, both during sessions and between sessions, have been a regular feature of the activities of GATT. Since 1958, when a general review of all such restrictions was undertaken, countries maintaining these have been required to consult annually (once in every two years in case of less developed countries). In the past twelve years, a number of such consultations have been held. These contribute to a better understanding by officials of different countries of the impact and ramifications of import restrictions, of ways and means of reducing the need for these, and of alleviating their harmful effects. (22) Though consultations alone are not


enough to persuade a contracting party to remove quantitative restrictions, sometimes these have proved quite helpful in activating the governments to action when they were considering the appropriateness of time for such action.

Thus, the South African Government attributed the relaxation of its balance of payments restrictions to the insistence of GATT members. The Belgian, Dutch, and the West German governments respectively relaxed their balance of payments restrictions as the aftermath of extensive GATT consultations. The Canadian and the United Kingdom governments evidenced a sensitivity to GATT pressure which may have figured in their decisions, respectively, to eliminate and to relax their existing restrictions. (23)

Any contracting party can lodge a complaint to the Contracting Parties that another contracting party is applying restrictions which are inconsistent with the relevant provisions of the Agreement and are causing damage to its trade. If it can establish a prima-facie case, the contracting parties, after ascertaining that the direct negotiations between the concerned parties have not been successful, shall invite the contracting party applying restrictions to enter into consultations with them. The words 'prima-facie case' were inserted to prevent the lodging of frivolous complaints and to make it obligatory for the complaining party to document the complaint to some extent. (24)

If the Contracting Parties determine that the complaint is justified and no agreement is reached in consultations with them, they shall recommend the withdrawal or modification of the restrictions. If the recommendations are not carried out within


(24) I:PFCT/C/11, CH/PV/5, 21 cf. Muharram, n. 1, 199.
the period specified by the Contracting Parties, they may release the complaining party from such obligations under the Agreement towards the contracting party applying the restrictions as they determine to be appropriate under the circumstances. In acting under this provision, the Contracting Parties shall pay due regard to any special external factors adversely affecting the export trade of the contracting party applying restrictions.

If the restrictions under this article are used persistently and widely indicating a general disequilibrium restricting world trade, the Contracting Parties shall initiate discussions to find out other measures to be adopted either by the Contracting Parties suffering from a strain on their balance of payments or by those enjoying a highly favourable balance of payments or by any other appropriate intergovernmental organization, to remove the underlying causes of the disequilibrium. (25)

In spite of the provision of the above mentioned safeguards, no body can deny that the quantitative restrictions permitted to safeguard the balance of payments have been misused for protective purposes. The following statement by the Executive Secretary of the General Agreement on Tariffs and Trade testifies to this conclusion:

In practice the trade in agricultural products is the area in which the GATT today is least effective. In the first place many countries which are parties to the General Agreement are still in balance of payments difficulties and the balance of payments justification conceals the protection which their agriculture is receiving through import restrictions. That is to say that import restrictions whose real purpose is to protect domestic agriculture are attributed to balance of payments difficulties.

(25) Article XII, 5.
In some cases this fact acts as a deterrent to the countries concerned to abandon a resort to Article XII for which there is in fact but slender justification. (26)

The American opinion has generally been against this provision. Institution of quantitative restrictions may deprive the supplying countries of certain tariff concessions for which they have paid a price in the form of reciprocal concessions. No doubt, no country would permit any outside interference in its domestic affairs, but the country which made concessions in good faith should not be forced to bear the burden of restrictions necessitated by inappropriate domestic policies adopted in other countries. (27) It is maintained that the balance of payments difficulties are not inherent. Given the will, these can be avoided and even if they arise these can be rectified by a suitable monetary and fiscal policy without the use of restrictions. It is said that there should be no exception for the balance of payments purposes from the general rule prohibiting the use of quantitative restrictions.

A respectable body of opinion - mostly American opinion - would agree that no nation need (28) have balance-of-payments difficulties. Threatened with a drain on their exchange reserves, nations can avoid import restrictions by pursuing a firm deflationary policy within their domestic economies. This may require heavy taxation and high interest rates; it may create unemployment, but in theory it can be done. This being so, it is maintained, import restrictions ought not to be countenanced. This argument is buttressed by still another contention: that nations have balance-of-payments difficulties only when they are attempting to peg


(27) GATT Document SR 9/14, 4.

(28) Emphasis by the author.
their currency at a rate higher than its 'real value.' If a nation did not attempt to maintain its currency at such a high level, it is asserted, the inflow of its foreign currency earnings would tend to equal the outflow and the nation's so-called 'difficulties' would disappear. (29)

The argument put forward against the escape clause permitting restrictions for balance of payments purposes is more theoretical than practical. In theory, it may be possible to achieve an equilibrium in the balance of payments with the help of monetary and fiscal policy without the application of restrictions. In actual practice, however, the cost of this in the form of a decline in national income, mass unemployment, unfavourable movement in the terms of trade etc. may far outweigh the total benefit from international trade. No deficit country can afford to forego its right to apply restrictions particularly in an age in which the old flexibility, which enabled the countries to rectify any deficit in the balance of payments without a considerable movement in the exchange rate or without a considerable decline in income and employment, no longer exists.

The United States proposed that a country applying or proposing to apply quantitative restrictions should be required to submit its restrictive system to the scrutiny of the Contracting Parties. (30) With the passage of time, a number of originally justifiable restrictions became protectionist in nature. Such scrutiny would enable the Contracting Parties to determine whether or not the restrictions were justified.

Another course suggested by the American interests is that, instead of a general provision permitting restrictions to


(30) GATT Document SR.3/14, 4-5.
safeguard balance of payments, any contracting party designing to institute quantitative restrictions should be required to seek prior approval of the Contracting Parties. (31) The Contracting Parties may judge each case on its own merit. (32) They may examine the nature and causes of the disequilibrium in the balance of payments and the alternatives available to rectify it. If they find that the balance of payments difficulties are genuine and cannot be rectified by other methods without involving a substantial loss to the economy, they may permit restrictions to the extent and for a period considered to be necessary. An examination of the nature and causes of the deficit and the alternatives available for rectifying it would involve an interference in the internal affairs of the concerned country and cannot be acceptable to it. Prior approval is not possible because action might have to be taken quickly. Further it may hinder the observance of secrecy of such action.

In addition to prior approval, a two-year limit was suggested on the use of restrictions. This would prove an incentive for countries to adopt proper policies for improving the balance of payments position instead of indefinitely sheltering behind quantitative restrictions. Provision, however, should be made for waiving the rule in the case of a country which is in serious balance of payments difficulties owing to reasons beyond its control. (33) Time-limit cannot be acceptable to primary-producing countries experiencing wide fluctuations in the balance of payments

(31) Ibid., 4-5.
(32) Vernon, n. 29, 10.
(33) GATT Document SR. 9/14, 8.
owing to circumstances beyond their control viz. fluctuations in prices and production, seasonal demand etc. Time-limit may lead the country to tighten its restrictions for quickly building up currency reserves. (34) New Zealand mentioned that the time-limit of one year is particularly unacceptable to a country far from world markets. (35) It takes six to nine months for the restrictions to become effective in this country.

In addition to the above exceptions to the general elimination of quantitative restrictions provided in the GATT, sometimes countries have been granted special waivers permitting them to apply quantitative restrictions and sometimes the countries have instituted quantitative restrictions violating the GATT provisions. Some such cases are mentioned below:

The 'Hard-Core' Problem. At the ninth session while tightening the provisions relating to the use of quantitative restrictions, the Contracting Parties decided to assist the contracting parties in eliminating the so-called 'hard-core' of their import restrictions. These are restrictions which have been persistently maintained for balance of payments purposes and the sudden removal of which, when no longer justified by the balance of payments reasons, would result in a serious injury to the industry receiving incidental protection from such restrictions.

In March 1955, the Contracting Parties took a decision to temporarily waive to the necessary extent, under such circumstances, the obligations of Article XI subject to the concurrence of the

(34) GATT Document SR. 9/14, 6.
(35) GATT Document SR. 9/14, 6.
Contracting Parties. (36) The Contracting Parties may impose such conditions and limitations as they determine to be reasonable and necessary. The concerned contracting party is required to eliminate such quantitative restrictions over a comparatively short period, not exceeding five years. The Contracting Parties shall annually review the operation of these 'hard-core' restrictions. This waiver would provide relief during the transitional period of adjustment. The provision for the annual review of the progress made towards the removal of 'hard-core' restrictions would safeguard against the abuse of the waiver. So far only one country - Belgium - has applied for a waiver under the 'hard-core' provision.

"Residual" Import Restrictions

The continued application of the so-called "residual" import restrictions by many industrialised countries led the Contracting Parties in 1960 to seek a solution by adopting, on a provisional basis, special procedures for their removal. It was decided to invite contracting parties applying restrictions "contrary to the provisions of the General Agreement and without having obtained the authorization of the Contracting Parties" to communicate to the Executive Secretary lists of such restrictions and subsequent changes to those lists. (37) At the nineteenth session, a Panel of Experts was appointed to examine the adequacy of the notification received and to report thereon.

(36) GATT, Basic Instruments and Selected Documents, Third Supplement (Geneva, 1955) 38-41.
The Panel of Experts submitted a report in May 1962 in which it noted that fifteen countries were, at that time, applying residual import restrictions. The waiver granted to Germany in 1958 expired in November 1962, and, therefore, the restrictions still maintained by her also came under this category. According to the notifications received by November 1963, the contracting parties applying import restrictions are: Australia, Austria, the Benelux countries, Canada, France, the Federal Republic of Germany, Italy, Japan, Norway, Portugal, Federation of Rhodesia and Nyasaland, Sierra Leone, Sweden, the United Kingdom and the United States.

The contracting parties at the annual sessions have considered the question of tightening procedures for effective action for expediting the elimination of residual restrictions. Because of the difficulty in securing agreement on the adoption of new procedures for tackling the problem of restrictions, it has been left to individual contracting parties affected by these to secure redress through the normal procedures for consultation and complaint provided in Articles XXII and XXIII of the GATT.

United States Restrictions on Agricultural Imports. During and after the Second World War, the United States vastly expanded its agricultural production to meet urgent demands for foodstuffs and some agricultural raw materials in foreign countries. Afterwards, to maintain that level of production it instituted a price support scheme. The result was that the prices of agricultural products in the United States went out of line with the world prices. The United States Government is fully aware of the domestic and international aspects of this problem. Unless imports are controlled, the maintenance of artificially high prices would
attract imports in abnormally large quantities and thereby defeat the price support scheme. To guard against the defeat of the price support scheme by abnormal imports, the Congress of the United States enacted Section 22 of the United States Agricultural Adjustments Act (of 1933), as amended. This Section provides that the President must institute import restrictions whenever he finds, after investigation, that such products are being imported or are very likely to be imported in such large quantities or under such conditions as to render ineffective the programme of the Agricultural Department with respect to any agricultural commodity. It further requires the President not to accept any international obligation inconsistent with the provisions of this Section.

Under the provisions of the General Agreement, quantitative restrictions on the import of agricultural products can be instituted only if the domestic production of similar articles is also restricted. To carry out the provisions of Section 22, the United States requested the Contracting Parties, under 5(a) of Article XXV of the General Agreement, for a waiver of the provisions of Articles II and XI of the General Agreement. It is assumed that before taking action, it will discuss the proposed measures with all the contracting parties substantially interested and will give prompt consideration to any representations made to it. The United States Government intended to promptly abolish the restrictions when the circumstances no longer justified these and to modify restrictions according to changed circumstances. The United States took positive measures to solve the problem of surpluses of agricultural products where import is restricted under Section 22 and intended to continue to seek a solution of the problem. Keeping in view the above, the Contracting Parties
grant a waiver to the United States to the extent necessary to prevent a conflict between the requirements of Section 22 and its obligations under the General Agreement. (38) The waiver was granted subject to the following conditions: 1) Upon the request of any contracting party which considers that its interests are being seriously prejudiced as a result of the import restrictions instituted under Section 22, the United States will promptly review the situation to find out if any modification or termination of the restrictions is necessary owing to changed circumstances. In case the review leads to the conclusion that a change is necessary in the import restrictions, the United States will conduct an investigation in accordance with the provisions of Section 22. 2) If such an investigation is made, any contracting party substantially interested will be given fullest notice and opportunity for representations and consultations. 3) The United States will give due consideration to any representations submitted to it. 4) The decision of the President following the investigation will be communicated to the contracting parties which made representations or entered into consultations at the earliest possible time. If the decision imposes restrictions on additional products or extends or intensifies the existing restrictions, the Communication will give particulars of such restrictions and the reasons necessitating these. 5) The United States will abolish or relax restrictions as soon as permitted by the changed circumstances. 6) The Contracting Parties will annually review the action taken by the United States under this Decision. For

(38) GATT, n. 36, 32-6.
this purpose, the United States will annually submit to the Contracting Parties a report containing the necessary particulars.

The United States is very sensitive to the political pressure of the farming classes. Keeping this in view, and to put the United States in a position to go to the Congress for seeking ratification of the Agreement on the Organisation for Trade Co-operation, the Contracting Parties found it necessary to grant a waiver to the United States. (39) It was recognised that the United States will use the waiver with moderation. The volume of trade affected by the agricultural restrictions under Section 22 is not considerable as compared with the total imports of the United States. The United States has made every effort to limit the area in which agricultural restrictions are applied.

Waiver Granted to Belgium in Connection with Import Restrictions on Certain Agricultural Products. The Government of Belgium requested for a waiver from the provisions of Article XI to the extent necessary to allow the maintenance of restrictions on the import of certain agricultural and fisheries products under the 'hard-core' provisions. The restrictions were continuously in force since 1955. Sudden removal of restrictions would result in serious injury to the domestic industries having received incidental protection therefrom. Alternative measures consistent with the General Agreement were not available. It was expected that the restrictions would be eliminated over a comparatively short period. The Belgian Government accepted the undertakings contained in Section A, paragraph 3 of the Decision of 5 March 1956. Keeping above things in view, the Contracting Parties

(39) White, n. 26, 15.
decided on 3 December 1955 to grant the requested waiver to Belgium. (40)

Waiver Granted to Luxembourg in Connection with Import Restrictions on Certain Agricultural Products. The Government of Luxembourg requested for a waiver from the provisions of Article XI to the extent necessary to allow the maintenance of restrictions on the import of certain agricultural products. It stated that it has undertaken to pursue actively harmonization of its agricultural policy with the policies of its two partners, to take all measures necessary to enhance the competitive strength of its agriculture and therefore to relax the restrictions currently maintained as far as possible. (Owing to natural factors, agriculture in Luxembourg was facing exceptionally adverse conditions. Removal of restrictions would cause serious injury to the economy of the Luxembourg without appreciably benefiting the trade of the other contracting parties. Partners of Luxembourg in the Benelux Customs Union, which are the contracting parties primarily interested, expressly accepted the maintenance of these restrictions. The effects of the restrictions on countries other than Belgium and Netherlands would be very small. Keeping these things in view, the Contracting Parties decided, on 3 December 1956, to grant the requested waiver to Luxembourg. (41)

German Import Restrictions. In 1957, the Contracting Parties, on the basis of the findings of the International Monetary Fund regarding the position of monetary reserves and balance of

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(40) GATT, Basic Instruments and Selected Documents, Fourth Supplement (Geneva, 1956) 22-5 and 102-10.

(41) Ibid., 27-9 and 110-13.
payments of the Federal Republic of Germany, decided that the
Federal Republic was no longer justified in maintaining import
restrictions on balance of payments grounds. These restrictions
affected a larger number of agricultural products and some
industrial products. The Federal Republic contended that the terms
of its accession to GATT did not oblige it to eliminate restrictions
on certain agricultural products which were of major importance to
the trade of other countries. This contention, however, was not
accepted by the Contracting Parties. The Federal Republic felt
that sudden removal of these restrictions would result in serious
injury to the concerned domestic industries. Since the findings
of the Fund and the decision of the Contracting Parties, it
consulted the contracting parties principally concerned and from
time to time reduced the number of import restrictions. It
intended to take certain further measures of liberalisation. It
was ready to make every possible effort to reduce existing
restrictions. In reviewing the Marketing laws, it intended to
ensure that measures applied under these laws were consistent with
the provisions of the General Agreement. Keeping these things
in view, on 30 May 1959, the Contracting Parties decided, subject
to certain conditions, to permit it to maintain the restrictions
on the importation of certain agricultural and industrial
products. (42) This settlement of the issue, however, did not
satisfy the countries whose export trade continued to be adversely
affected by the import restrictions authorised by the above
decision. (43)

(42) GATT, Basic Instruments and Selected Documents,

Invisible Restrictions

Imports or exports can be restricted not only directly and openly with the application of tariffs and quantitative restrictions but also in a concealed manner by indirect measures. A large increase in taxes on imported products as compared with that in taxes on domestic products is equivalent to an increase in tariffs. Tariffs may be raised by shifting products to a classification bearing a comparatively higher rate of duty. *Ad valorem* duties may be raised by changing the method of valuation in a way which increases the value of the imported products. Imports may be restricted through domestic laws which require the mixing of domestic with imported materials in a certain specified ratio in the manufacture of industrial goods. These can be restricted also by putting unnecessary obstacles in the way of importers viz. unnecessary formalities may be prescribed for importers to increase the cost of imports and to delay the entry of imported goods, goods may be withheld for long periods for determining their value, inconvenient and expensive methods of applying marks of origin may be prescribed. Invisible restrictions are, generally, more wasteful and injurious to exporting as well as to the importing countries than the direct and open ones.

Reduction in the barriers to world trade brought about by the General Agreement might be nullified by the above mentioned practices if these are not properly regulated. To control these unfair practices, the Agreement contains comprehensive provisions. These provisions make an excellent code of trade which is very essential to maintain the spirit of the Agreement. Let us state these provisions briefly.
National Treatment of International Taxation and Regulations. Article III provides that internal taxes and regulations should not be used to provide protection to domestic producers against foreign competition. Taxes on imported goods should not be higher than those on like domestic products. Laws and regulations affecting the sale, purchase, transportation, distribution or use of imported goods should not be more burdensome than those applying to like domestic products. Domestic producers or processors should not be required to use domestic raw materials in specified amounts or proportions.

The levies imposed for fiscal purposes by some industrial countries on certain commodity imports, particularly tropical beverages, has been a subject of extensive discussions in international forums in recent years. In many cases, these charges make only a small contribution to government revenue, even when the rate is a high proportion of the import price of the commodity. The elimination of such taxes is likely to considerably stimulate consumption in the importing countries. The advanced countries should progressively reduce, with a view to their total elimination, those internal fiscal charges and revenue duties which have the effect of increasing retail prices and thus restricting consumption of products wholly or mainly produced in less developed countries.

Freedom of Transit. The Agreement provides for the freedom of transit, via the most convenient route, through the territories or any contracting party. Traffic in transit should not be subject to any unnecessary delays and restrictions, should be free from all transit and customs duties or other charges (except those commensurate with administrative expenses entailed by transit
or with the cost of services rendered, should be accorded most favoured nation treatment with respect to all charges, regulations, and formalities and should not be subjected to any regulations or charges that are unreasonable or burdensome. (44)

Valuation. Article VII of the Agreement lays down detailed principles to be followed in determining the value of all products subject to duties or other charges or restrictions on exportation and importation based upon value. The most important of these is the principle that the value for customs purposes should be the actual and not arbitrary or fictitious. Actual value should be taken as the price at which the goods are sold in comparable quantities under fully competitive conditions in the ordinary course of trade. The value for customs purposes should not include taxes levied only on domestic consumption in the exporting country and not on exported quantities. For customs valuation, the currency of one contracting party should be converted into that of another at the rate of exchange established by the International Monetary Fund. The method of valuation should be stable and given sufficient publicity to enable the traders to estimate the value for customs purposes with a reasonable degree of certainty. The contracting parties undertake to give effect to these principles. They are under the obligation, at the request of any contracting party, to review the operation of any of their laws or regulations relating to the value for customs purposes.

Fees and Formalities Connected with Importation and Exportation. The Contracting Parties recognise that all fees and charges other than export and import duties should be limited in

(44) Article V.
amount to the approximate cost of services rendered and should not represent either an indirect protection to domestic products or a tax on imports or exports for fiscal purposes. They further recognise the need for reducing the number and diversity of fees and charges, and minimising the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements. They undertake not to impose heavy penalties for minor breaches of customs regulations or procedural requirements. The contracting parties are under the obligation, at the request of any contracting party or Contracting Parties, to review the operation of its laws and regulations in the light of the provisions of this Article. (45)

Marks of Origin. With regard to marking requirements, each contracting party is under the obligation to accord most favoured nation treatment to other contracting parties. (46) The contracting parties recognise that, in adopting and enforcing laws and regulations relating to marks of origin, the difficulties and inconveniences that may be caused by such measures to the commerce and industry of exporting countries should be reduced to the minimum. The laws and regulations should be such as do not damage imported products, materially reduce their value or unreasonably increase their cost. Generally, the contracting parties should not impose penalties for failure to comply with marking requirements. The contracting parties undertake to co-operate with each other in preventing the use of trade names which misrepresent the true

(45) Article VIII.

(46) Article IX.
origin of a product and are detrimental to the distinctive regional or geographical names of the products of the territory of a contracting party which are protected by its legislation.

**Publication and Administration of Trade Regulations.** The Agreement requires the contracting parties to promptly publish all trade agreements and laws, regulations, judicial decisions, and administration rulings of general application affecting international trade. (47) New and enhanced restrictions cannot be enforced before these have been officially published. The contracting parties undertake to maintain or institute, as soon as possible, independent tribunals or procedures for reviewing and correcting the administrative action relating to customs matters. This will provide traders an access to the requisite transformati and protect them against arbitrary action.

**Tied Loans.** These are another form of invisible barriers to world trade. These divert trade into channels other than those determined by the principle of comparative costs and are, therefore, contrary to the basic principles of the General Agreement. The Agreement should incorporate provisions to ensure that no conditions are attached to the international loans as to the place at which these can be spent.

The Agreement's Protocol of Provisional Application permitted the signatory countries to deviate from GATT to the extent required by the existing legislation. This has resulted into considerable deviations of the actual customs administration from the provisions

(47) Article X.
of the GATT. The extremely bewildering technical nature of the subject has prevented the contracting parties from lodging complaints against each other whenever the actual customs administration deviated from the provisions of the GATT. (48)

In spite of the extremely complex nature of the subject, the contracting parties have made some headway. In 1951 and 1952, they developed a convention to facilitate imports of commercial samples and adopted recommendations on documentary requirements for imports and on consular formalities. (49) In 1953 and 1954, they tackled certain aspects of the problem of customs valuation, the problem of defining the nationality of imported goods and the problem of formalities connected with quantitative restrictions. (50)

Non-discriminatory Administration of Quantitative Restrictions

The contracting parties undertake not to discriminate against any contracting party in the application of quantitative restrictions on imports and exports. (51) In applying quantitative restrictions, they should aim at distributing the trade among the contracting parties in a ratio in which it is likely to be distributed in the absence of such restrictions. To attain this end, they should observe the following four principles. (52)

(48) Vernon, n. 23, 212.
(49) GATT, n. 13, 210 and GATT, Basic Instruments and Selected Documents, First Supplement (Geneva, 1953) 23-6.
(51) Article XIII, 1.
(52) Article XIII, 2.
1) If possible, total quantity of the product to be imported during a specified future period should be fixed and announced in advance.

2) Where quotas are not practicable, the restrictions may be applied by issuing licences or permits without a quota.

3) Except for the purpose of operating quotas allocated in accordance with the above-mentioned 4th principle, the contracting parties should not require that import licences or permits to be utilised for the importation of the product concerned from a specified source.

4) If the quota is allocated among the supplying countries, the contracting party may decide the allocation by agreement with all contracting parties substantially interested in supplying the product concerned. This will ensure a fair allocation of the quota. Where this is impracticable, the contracting party shall allocate the quota on the basis of the shares of the contracting parties in a previous representative year paying due consideration to the special factors which may have affected or may be affecting the trade in the product concerned. Except specifying the period within which the allocated quota may be imported, it shall not impose any conditions or formalities which would obstruct the full utilisation of the quota allocated to any contracting party.

In cases in which imports are restricted through the application of import licences, the contracting party applying import restrictions shall supply, upon request of any contracting party interested in the trade in the product concerned, all relevant information regarding the administration of the restrictions, the import licences granted over a recent period and the distribution
of such licences among supplying countries. No contracting party is required to supply information as to the names of the importing or supplying enterprises. (53) In case the imports are restricted through the fixation of quotas, the contracting party applying the restrictions is required to give public notice of the total quantity or the value of the product or products to be imported during a specified future period and of any subsequent changes in it. If the quotas are allocated among the supplying countries, the contracting party applying the restrictions shall immediately inform the contracting parties interested in supplying the product concerned and give public notice of the shares in the quota allocated to various supplying countries. In connection with paragraph 2(d) of this Article and paragraph 2(c) of Article XI, the selection of the representative period and the appraisal of special factors affecting trade in the product concerned shall be made initially by the contracting party applying the restrictions. (54) It shall, however, upon request, consult with any contracting party substantially interested in supplying the product or the Contracting Parties as to the need for an adjustment of the proportion determined, or of the base period selected, or for the reappraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally relating to the allocation of an adequate quota or its unrestricted utilisation. The provisions of this Article shall also apply to tariff quotas, and in so far as applicable to export

(53) Article XIII, 3.
(54) Article XIII, 4.
restrictions. (55) Notwithstanding the above-mentioned comprehensive rules, it is not possible to prevent discrimination unless the contracting parties act in good faith and observe rules not only to letter but also to the spirit. If any contracting party desires it can discriminate against certain particular parties in the allocation of quota without much difficulty. There is no objective and precise criteria for determining the representative period. A country can deliberately discriminate against certain countries by selecting a period as representative in which the imports from these countries were particularly low. This formula can be applied only if detailed and accurate statistics relating to foreign trade are available for the representative period. Further the statistics must differentiate between the country of ultimate and the country of immediate origin. Because of varying classification of commodities and other reasons, the statistics of different countries lack consistency and vary considerably. This provides scope for deliberate discrimination.

The scope for discrimination also exists in the appraisal of the special factors involved. Unless the allocation on the basis of the representative period is adjusted in the light of the special factors which might have occurred since then or are likely to occur in the near future, it tends to freeze the old pattern of trade. Freezing the old pattern of trade in a dynamic world in which the comparative cost position of different countries remains changing results into an uneconomic use of the productive resources of the world.

(55) Ibid.
Any country that administers a quota system may discriminate in selecting the commodities that are to be controlled, in classifying those commodities, in adopting a base period to govern allocations, and in appraising the other factors that are involved. (56)

Exceptions to the Rule of Non-discrimination

The contracting parties recognise that the aftermath of war has created difficult problems of adjustment which make difficult the non-discriminatory application of quantitative restrictions in the near future and require certain exceptions to the general rule of non-discrimination in the transitional period. (57) One of the most important problems of the postwar world is that of the inconvertibility of currencies. In a world of inconvertibility of currencies, the requirements of non-discrimination might contract instead of expanding world trade. A country having a deficit with one or two countries and a surplus with the rest of the world, if required to observe the rule of non-discrimination, will have to apply restrictions with equal severity on imports from countries with whom it has a deficit as well as from those with whom it has a highly favourable balance of payments. The import restrictions to correct a deficit with one or two countries will accentuate the disequilibrium in its balance of payments with the whole of the rest of the world. If it were allowed to discriminate against one or two countries with whom it has a deficit, it can permit larger imports from other countries with whom it has a surplus. This will not only

(56) Clair Wilcox, A Charter for World Trade (New York, 1949) 89.

(57) Article XIV, 1(a).
expand world trade but also relieve the balance of payments
difficulties of the countries with whom it was having a surplus;
the relaxation in the balance of payments of the countries having
a deficit with it will decrease the necessity of restrictions and
thus further help in the expansion of world trade. At the same
time, it may be mentioned that an unrestricted permission of
discrimination for rectifying a deficit with particular countries
may prove dangerous. It may be used not to cure a disequilibrium
in the balance of payments with particular countries but for
exchanging reciprocal concessions. This will divert trade into
bilateral channels and thereby defeat the very objective (i.e.
restriction of multilateralism) for which non-discrimination is
prescribed.

The Agreement provides two sets of rules permitting
discrimination. The first permits: (58)

1) the maintenance of discriminatory restrictions
having an affect equivalent to exchange
restrictions permitted by the Article XIV of the
Articles of Agreement of the International
Monetary Fund;

2) the continuation and adaptation to changing
circumstances of any restrictions which were
being applied on 1 March 1948 to safeguard
balance of payments but would not come under
(1) above.

The second provides an alternative to the first for contracting
parties which signed Protocol of Provisional Application before
1 July 1948. They could elect by written notice to the Contracting
Parties before 1 January 1949, to be governed by the provisions of
Annex J of the Agreement. Annex J permits discriminatory import

(58) Article XIV, 1(b) and (c).
restrictions for balance of payments if these enable the contracting party to obtain imports larger than those which would be obtained without discrimination. The permission is subject to the following provisions: 1) Prices paid for such goods must not be substantially higher than those at which the similar goods are available from other contracting parties and the difference in prices should be progressively reduced over a reasonable period; 2) the contracting party applying discriminatory import restrictions under this provision should not enter into any arrangements which would appreciably reduce its earnings of gold or convertible currency from its exports to other contracting parties not party to the arrangement; (59) 3) the discriminatory import restrictions should not cause unnecessary damage to the commercial or economic interests of any other contracting party.

The first rule has the advantage that it is simple and definite. This, however, suffers from the disadvantage that it differently treats the contracting parties in similar circumstances if these were applying restrictions of different severity on the base date. (60) The second rule uniformly treats all contracting parties by applying the same criteria to all of them. This, however, is more complex than the first one.

The policies applied in the use of import restrictions under sub-paragraphs (b) and (c) or under Annex J in the postwar

(59) The provision is meant to ensure that the exports are not diverted, through bilateral agreements, from markets where these can be sold for hard currency which is acceptable to every country and thus removes the need for discrimination.

(60) Milcox, n. 56, 90.
transitional period shall be so designed as to promote the maximum development of multilateral trade possible during that period and to expedite the attainment of a balance of payments position which will avoid the need for the application of Article XII or that of the transitional exchange arrangements. (61) A contracting party may practise discrimination under sub-paragraph (a) and (c) or under Annex J only so long as it is availing itself of the postwar transitional period arrangements under Article XIV of the Articles of Agreement of the International Monetary Fund, or of an analogous provision of a special exchange agreement entered into under paragraph 6 of Article XV. (62) The Contracting Parties will report, not later than 1 March 1950, and each year after that on any action still being taken by the contracting parties in pursuit of the provisions of the sub-paragraphs (b) and (c) of Article XIV, or those of the Annex J. (63) Further the contracting parties still entitled to take action under sub-paragraph (c) or Annex J shall, in March 1952 and in each year after that, consult the contracting parties as to any deviations from Article XIII still in force pursuant to such provisions and as to its continuation. After 1 March 1952, the Contracting Parties may impose any limitations on the action under Annex J going beyond the maintenance in force or adaptation to changing circumstances of deviations which have been approved, after consultation, by the Contracting Parties. The Contracting Parties may, if they think

(61) Article XIV, 1(e).
(62) Article XIV, 1(f).
(63) Article XIV, 1(g).
necessary in exceptional circumstances, make representations to any contracting party authorised to apply discriminatory import restrictions under sub-paragraph (c) of this Article that conditions are favourable for the termination of any particular deviation from the provisions of Article XIII, or for the general abandonment of deviations, under the provisions of that sub-paragraph. (64) Similar representations may be made, in exceptional circumstances, after 1 March 1952, to any contracting party authorised to apply discriminatory import restrictions under Annex J. The contracting party will be given sufficient time to reply such representations. Any contracting party will have to limit or terminate, within sixty days, any deviations from the provisions of Article XIII which are found by the Contracting Parties to be unjustifiable.

A contracting party applying import restrictions under Article XII or under Section B of Article XVIII, may, with the permission of the Contracting Parties, deviate from the rule of non-discrimination provided in Article XIII. (65) The deviation must be temporary and relate only to a small part of its external trade. Further the benefit to the contracting party or contracting parties from such a deviation should be substantially larger than the damage which may be caused to the trade of other contracting parties. The territories having a common quota in the International Monetary Fund can apply import restrictions in accordance with the provisions of Article XII or of Section B of Article XVIII against other countries but not among themselves provided these are

(64) Article XIV, 1(b).
(65) Article XIV, 2.
consistent with the provisions of Article XIII in all other respects. (66) A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be prevented by Article XI to XV or Section B of Article XVIII from applying measures which are meant to direct exports in such a manner as would increase its earnings of currencies which can be used without deviation from the provisions of Article XIII. (67)

Articles XI to XV or Section B of Article XVIII shall not prevent a contracting party from applying quantitative restrictions which have an effect equivalent to exchange restrictions permitted under Article XVII, 3(b) of the Articles of Agreement of the International Monetary Fund. (68) A contracting party can apply such restrictions also under the preferential arrangements provided in Annex A of the Agreement pending the result of the negotiations mentioned therein. Sub-paragraph 3(b) of Article VII of the Articles of Agreement of the International Monetary Fund permits restrictions against the country whose currency has been formally declared by the Fund to be scarce. The currency will be declared scarce if the Fund finds that the demand for a member's currency seriously threatens its ability to supply that currency. There may exist an acute scarcity of a currency in world trade, the Fund cannot declare it scarce unless the demand seriously threatens the Fund's ability to supply it. If the countries experiencing a shortage of the currency do not go to the Fund for

(66) Article XIV, 3.
(67) Article XIV, 4.
(68) Article XIV, 5.
assistance owing to certain reasons, the currency cannot be declared scarce. Such a situation has actually existed in the case of dollars for a long time. Till recently, world has been experiencing an acute shortage of dollars. Several countries, however, did not go to the Fund for assistance because of a number of reasons. Fund, therefore, did not declare dollar to be scarce. Under such circumstances, the contracting parties could not be permitted to discriminate against the United States in spite of an acute shortage of dollar. To avoid such situations, as proposed by the United Kingdom, discrimination should be permitted, when a currency becomes scarce in world trade, whether or not the currency has been formally declared to be so. (69)

Exchange Arrangements

Exchange restrictions fall within the jurisdiction of International Monetary Fund whereas trade restrictions come under the jurisdiction of the General Agreement. Trade restrictions and exchange restrictions can be substituted for each other for achieving a particular end. If the evasion of the provisions relating to one device by applying the other device is to be prevented, it is very essential that the provisions relating to these two devices of control should be framed and administered consistently. The Agreement, therefore, requires the Contracting Parties to co-operate with the Fund to enable the Fund and the Contracting Parties to follow a co-ordinated policy regarding exchange questions within the jurisdiction of the Fund and

(69) GATT Document SR. 9/16, 8.
quantitative restrictions and other trade measures within the jurisdiction of the Contracting Parties. (70) The Contracting Parties are required to consult the International Monetary Fund and to accept all its findings of statistical and other facts when dealing with problems relating to monetary reserves, balance of payments or foreign exchange arrangements. (71) They shall also accept the determination of the Fund as to whether or not any 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 agreement between the contracting party and the Contracting Parties. In reaching final decisions in cases involving the criteria set forth in paragraph 2(a) of Article XII or in paragraph 9 of Article XVIII, they 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 consultations in such cases.

At Geneva, it was proposed by the United States that the Fund be given final responsibility in regard to financial matters such as exchange control, balance of payments questions, monetary reserves, etc. (72) This would avoid conflicts of jurisdiction and the necessity of duplicating the technical personnel of the Fund. The transfer of power of taking decisions on financial

(70) Article XV, 1.
(71) Article XV, 2.
(72) W.A. Brown, Jr., The United States and the Restoration of World Trade (Washington, D.C. 1950) 88.
matters from GATT to International Monetary Fund would have given
more voice to the United States having a weighted vote in the Fund
but only one vote in the GATT. The proposal of the United States
was, therefore, opposed by several other parties. The problem
was solved by a well-thought out compromise. The compromise
requires the contracting parties to accept all facts and determina-
ations of the Fund in regard to financial matters but at the same
time vests them with the final authority of taking action. The
Fund has no say in deciding the action to be taken by the Contracting
Parties. Further it is to be decided by the Contracting Parties
whether or not the subject with which they are dealing involves
monetary implications and hence the necessity of consulting the
Fund. (73)

The authority of the Contracting Parties to
administer GATT is unaffected by the fact that
the Contracting Parties base certain of their
actions on the facts supplied and the opinions
rendered by the Fund. (74)

The Contracting Parties undertake not to frustrate the
provisions of the Agreement by exchange action nor those of the
Fund by trade action. (75) If the Contracting Parties consider
that any contracting party is applying exchange restrictions on
payments and transfers in connection with imports in a manner
inconsistent with the exceptions provided for in the Agreement
for quantitative restrictions, they shall report the matter to

(73) Ervin Hexner, "The General Agreement on Tariffs and
Trade and the Monetary Fund" in I.M.F. Staff Papers, Vol. 1,
No. 1 (Washington, 1950) 434.

(74) Ibid., 434.

(75) Article XV, 4.
the Fund. (76)

Any contracting party which is not a member of the Fund is required, within a time to be determined by the Contracting Parties after consultation with the Fund, to become a member of the Fund, or, failing that, enter into a special exchange agreement with the Contracting Parties. (77) Similarly, a contracting party which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the Contracting Parties. Any such agreement will be a part of the Contracting Party's obligations under the General Agreement. The terms of the special exchange agreement will be such as to ensure that the objectives of the Agreement will not be frustrated as a result of the exchange action of the contracting party executing the agreement. (78) At the same time, these shall not impose obligations on the contracting party which are more onerous than those contained in the Articles of Agreement of the International Monetary Fund. It was pointed out by New Zealand that it is not possible for her to sign the exchange agreement because it involves all the obligations of the Fund without its benefits. (79) A contracting party not member of the Fund is required to submit any such information, required by the Contracting Parties, as comes within the scope of the Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund. (80)

(76) Article XV, 5.
(77) Article XV, 6.
(78) Article XV, 7.
(79) GAiT Document SR. 9/14, 7.
(80) Article XV, 8.
The Contracting Parties have prepared a model text of the special exchange agreement in terms of which each contracting party not member of the Fund has to enter into a special exchange agreement. (81) The special exchange agreement contains provisions relating to exchange stability and orderly exchange arrangements, determination of the initial par value, gold transactions, foreign exchange dealings, obligations regarding exchange stability, change in par value, avoidance of restrictions on current payments, control of capital transfers, exchange restrictions in case of scarce currencies, convertibility of balances held by other contracting parties, restrictions on current international transactions during the transitional period, furnishing of information etc. The obligations imposed on a contracting party by the special exchange agreement are very similar to those imposed by the Articles of Agreement of the International Monetary Fund on its members. The Chairman of the Contracting Parties is authorised to sign such agreements and to take necessary action to implement these on behalf of the Contracting Parties. (82)

A contracting party may not enter into a special agreement so long as it uses the currency of another contracting party and so long as neither the concerned contracting party nor the contracting party whose currency is being used maintains exchange restrictions. (8) Such a contracting party, however, will have to enter into consultations with the Contracting Parties on any exchange problem.

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(81) GATT, n. 13, 117-23.
(82) Ibid., 18.
(83) Ibid., 18-19.
at any time on their request. Some contracting parties have been granted special waivers from the provisions of paragraph 6 of Article XV which requires that a contracting party which is not a member of the International Monetary Fund should become a member of the Fund or failing that enter into a special exchange agreement with the Contracting Parties. Two such cases are mentioned below.

**New Zealand.** Owing to special circumstances, New Zealand did not become a member of the Fund nor signed the special exchange agreement and requested the Contracting Parties for a waiver from the provisions of paragraph 6 of Article XV. Keeping in view that New Zealand has taken no exchange action contrary to the requirements of the General Agreement and its assurance to continue acting in a similar manner in future, the Contracting Parties decided under paragraph 5(a) of Article XXV, subject to certain conditions, to relieve New Zealand from the provisions of paragraph 6 of Article XV. (84)

**Czechoslovakia.** The Government of Czechoslovakia requested for a waiver from the provisions of paragraph 6 of Article XV. Owing to special circumstances, application of the provisions of paragraph 6 of Article XV, would have involved a number of legal and practical difficulties. Further, Czechoslovakia assured that she would act in exchange matters in accordance with the requirements of the special exchange agreement and the intent of the General Agreement. Keeping these things in view, the Contracting Parties decided, subject to certain conditions, to relieve

(84) GATT, n. 36, 42-3.
Czechoslovakia from the provisions of paragraph 6 of Article XV. (85)

The Agreement contains two exceptions regarding exchange controls. (86) Firstly, a contracting party is permitted to use exchange controls or exchange restrictions which are in accordance with the provisions of the International Monetary Fund or with those of the special exchange agreement even if these are contrary to the provisions of the Agreement. Secondly, it is permitted to apply restrictions or controls on imports or exports, in addition to those permitted under Article XI to XIV, which have no effect other than making effective such exchange controls or exchange restrictions.

Article VIII of the Fund Agreement subjects the imposition or continuance of exchange restrictions to the specific approval of the Fund. This Article, however, is not yet effective because Article XIV of the Fund Agreement gives almost complete freedom of action during the postwar transitional period and this transitional period has not yet been officially terminated. When Article VIII becomes effective after the termination of postwar transitional period, there will arise a conflict between the Fund and GATT provisions because GATT permits the application of quantitative restrictions for safeguarding the balance of payments without any specific approval of the Contracting Parties.

GATT and Fund widely differ in their method of operation. The General Agreement contains a specific policy criteria for

(85) Ibid., 43-4.
(86) Article XV, 9.
justifying restrictions for balance of payments purposes. Fund, on the other hand, does not lay down any specific criteria and vests the Executive Board with wide powers of action in this respect. At present, however, most of the members of the Fund are applying exchange restrictions for balance of payments purposes under Article XIV of the Fund Agreement. This Article permits exchange restrictions for balance of payments purposes subject to the condition that the members applying restrictions under this Article shall hold annual consultations with the Fund regarding the need for their continuation. The administration of the two institutions is also quite different. The GATT is administered by periodic sessions of the Contracting Parties. Fund is administered by an Executive Board, consisting of representatives of members, in continuous session. It can, therefore, act on behalf of its members at a short notice. The establishment of inter-sessional machinery for the GATT, of course, has considerably narrowed this difference. Fund is located in Washington and the GATT in Geneva. This makes difficult consultation over matters requiring immediate action. In spite of these difficulties, the two institutions have an excellent record of co-operation with each other. For the effective administration of quantitative restrictions, it is very essential that both the trade and exchange restrictions should be administered by a single authority. (87) The question arises as to which of the two institutions is more appropriate for administering quantitative restrictions. All

members of the Fund, most of whom are also parties to the General Agreement, have accepted the authority of the Fund over exchange restrictions. The parties to the General Agreement have also undertaken to consult the Fund and to accept all its determinations and findings of statistical and other facts relating to financial matters. Restrictions for balance of payments purposes can be justified on monetary and not on commercial policy grounds. For all these reasons, the Fund seems to be more appropriate than the GATT for administering quantitative restrictions for balance of payments. The institution and administration of quantitative restrictions, however, has special technical and commercial policy aspects which lie outside the competence of the Fund. (88) It is not proper, therefore, that the GATT loses all its authority over the application of quantitative restrictions. Further complication is created by the difference in voting rights in GATT and Fund. In GATT each contracting party casts one vote while in Fund there prevails the system of weighted votes. Members having a larger vote in Fund will prefer greater authority of Fund over quantitative restrictions while members having a smaller vote will prefer the reverse. A middle way will be joint control of Fund and GATT over quantitative restrictions for balance of payments. To institute a joint authority either Fund or GATT rules relating to the application of quantitative restrictions will have to be amended to make the two uniform.

It is not in the interest of the underdeveloped countries to agree to a joint control of quantitative restrictions by the Fund

(88) Ibid., 54.
and the GATT. The GATT gives some special concessions to under-developed countries for which the Fund Agreement contains no provision. The United States, which has always been fighting against quantitative restrictions, casts a heavily weighted vote in the Fund. The fundamental principle underlying GATT is co-operation while the Fund exercises compulsive control over its members. The underdeveloped countries cannot agree to a close and strict supervision over their commercial policies by the Fund which is primarily controlled by the developed countries.

A satisfactory working of the Fund is very essential for the success of the GATT. An expanding and stable system of international trade cannot be achieved and maintained without a stable system of international payments. The Fund's efforts for the achievement and maintenance of an equilibrium in the world balance of payments are very helpful for the removal of trade and exchange restrictions. No country can afford to remove import restrictions so long as its balance of payments position is not enough strong. Fund lends foreign exchange to its members for meeting short-term deficits in their balance of payments. In the absence of this facility, short-term deficits would lead to the institution of trade and exchange restrictions.