THE ISSUES OF SCOPE AND LEGAL STATUS IN WTO - IMF CONSULTATIONS(*)

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Abstract

In designing the international economic governance system after the Second World War, trade and finance, due to the close connection between them, were addressed as parts of a whole. A predictable and stable international monetary system was recognized as prerequisite for healthy and sustainable trade. However, these two issues were regulated under different institutional structures, by envisaging close cooperation and coordination. The International Monetary Fund (IMF), designed to be responsible for international financial and monetary issues, was established in 1944. The International Trade Organization (ITO) was designed to address international trade, while the General Agreement on Tariffs and Trade (GATT), with a limited scope, was temporarily put into implementation in January 1, 1948 to provide rapid tariff reductions until the ratification of ITO Charter. The ITO became still-born as it was not approved by national parliaments, especially by US Congress, and international trade continued to be regulated by the GATT. The GATT, with its unique organizational structure that gradually developed, continued its existence until the establishment of the World Trade Organization (WTO) in 1995 and hosted international trade negotiations. WTO, with more advanced legal and institutional structure, took over the functions of the GATT. Formal consultation procedures have constituted an important part of the cooperation between the GATT/WTO and the IMF in the context of the management of international trade and monetary/financial system. These procedures differ from traditional cooperation activities between international organizations and have a special character. It is regulated in a binding language as an obligation for the relevant WTO bodies to apply for consultations with the IMF on certain issues and to comply with the inputs received from the IMF. There are some points open to interpretation regarding the scope of the consultations and the binding and functional status of IMF inputs in the WTO, which this study discusses.

Keywords

World Trade Organization (WTO), International Monetary Fund (IMF), Balance of Payments Restrictions, Exchange Arrangements, WTO-IMF Consultations.

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DTÖ - IMF DANIŞMALARINDA KAPSAM VE HUKUKİ STATÜ MESELELERİ

Öz

İkinci Dünya Savaşı sonrasında uluslararası ekonomik yönetişim sistemi tasarlanırken ticaret ve finans konuları, aralarındaki yakın bağlantı nedeniyle bir bütünün parçaları olarak ele alınmıştır. Öngörülebilir ve istikrarlı bir uluslararası para sistemi, sağlıklı ve sürdürülebilir bir uluslararası ticaret için ön koşul olarak kabul edilmiştir. Bununla birlikte, bu iki konu farklı kurumsal yapılar altında düzenlenmiş; bu yapılar arasında yakın işbirliği ve koordinasyon öngörülmüştür. Uluslararası finans ve para konularından sorumlu olmak üzere tasarlanan Uluslararası Para Fonu (IMF) 1944 yılında hayata geçirilmiştir. Uluslararası ticareti ele almak üzere ise Uluslararası Ticaret Örgütü (ITO) tasarlanmış, bu arada, ITO Şartı devletler tarafından onaylanıncaya kadar hızlı bir şekilde tarife indirimleri sağlamak üzere, sınırlı bir kapsama sahip Gümrük Tarifeleri ve Ticaret Genel Antlaşması (GATT) 1 Ocak 1948'de geçici şekilde uygulamaya konulmuştur. ITO Şartı, başta ABD olmak üzere ulusal parlamentolarca onaylanmayınca hayata geçirilememiş, uluslararası ticaret konuları GATT tarafından düzenlenmeye devam etmiştir. GATT, tedricen gelişen özgün örgütsel yapısıyla, 1995'te Dünya Ticaret Örgütü (DTÖ) kuruluncaya kadar varlığını sürdürmüş ve uluslararası ticaret müzakerelerine ev sahipliği yapmıştır. Daha ileri bir yasal ve kurumsal yapıya sahip olan DTÖ, GATT'ın işlevlerini devralmıştır. Uluslararası para/finans sistemi ile ticaretin yönetimi bağlamında GATT/DTÖ ve IMF arasındaki işbirliğinin önemli bir kısmını resmi danışma usulleri oluşturmaktadır. Bu usuller, örgütler arasındaki geleneksel işbirliği faaliyetlerinden farklılıklar arz etmekte ve hususi bir karakter taşımaktadır. Belirli konularda, ilgili DTÖ organlarının IMF'e danışma başvurusunda bulunması ve IMF'den alınan girdilere uygun davranması, bağlayıcı bir dille, bir yükümlülük olarak düzenlenmiştir. Danışmaların kapsamı ile IMF girdilerinin DTÖ'deki bağlayıcılık ve işlevsel statüsüne dair yoruma açık hususlar bulunmaktadır. Bu çalışma, bahsi geçen kapsam ve hukuki statü meselelerini tartışmaktadır.

Anahtar Kelimeler

Dünya Ticaret Örgütü (DTÖ), Uluslararası Para Fonu (IMF), Ödemeler Dengesi Kısıtlamaları, Kambiyo Düzenlemeleri, DTÖ-IMF Danışmaları.

Extended Abstract

International trade and finance/money issues are closely interconnected. Healthy trade flows depend on the existence of a stable and properly functioning international monetary and financial system. For this reason, they were dealt simultaneously and together when designing the post-World War II global economic governance order. The International Monetary Fund (IMF), designed to be responsible for international financial and monetary issues, was established before the end of the war (1944). Based on fixed exchange rates, this system, with US Dollar (USD) at the center fixed to gold and other national currencies defined relative to USD, was called the Bretton Woods System. The system, in which the IMF was responsible for the supervision of fixed exchange rates and states were required to obtain permission from the IMF for exchange rate adjustments, provided predictability and stability for international trade. In the first half of the 1970s, USD-gold link was broken and then national currencies started to float against the USD, which later caused fundamental changes in IMF's functions.

On the other hand, the International Trade Organization (ITO), designed to discipline international trade, was stillborn. Preparations of the ITO Charter and the text of the General Agreement on Tariffs and Trade (GATT), which aimed to provide rapid customs reductions in goods trade, were conducted simultaneously. GATT, came into force on January 1, 1948 through a provisional application protocol, would remain in force until the approval of ITO Charter and then it would be incorporated into the ITO. After several attempts, the ITO Charter failed to receive approval from the US Congress and fell off the agenda in 1951. Thus, GATT continued to exist as the only instrument regulating international trade until the establishment of the WTO in 1995, and became a *de facto* international organization with its *sui generis* organizational structure that developed over time and expanding area of responsibility.

The close interaction between trade and finance has brought about the need for an advanced level of co-ordination and cooperation between relevant organizations. The issue of cooperation was not included in the IMF Articles as the ITO Charter and the GATT text had not yet been completed when the IMF was established. However,

in various provisions of the GATT, GATT Contracting Parties were obliged to consult with the IMF on certain matters falling within the IMF's responsibility. The obligation of consultation is a special form under the broader obligation of cooperation. This obligation has been carried over to the WTO period. The consultations in question are of a formal nature and include convention-based legal obligations for the GATT/WTO. Rules regarding the procedures for consultations have developed through secondary regulations and customs.

Yet, there are issues open to debate regarding the scope of the consultations and the legal status of the binding nature and function of the inputs presented by the IMF. First of all, although the functions of the international financial/monetary system and the IMF have undergone radical changes since the early 1970s, the relevant GATT provisions have remained intact. This requires an updated interpretation of some issues with a dynamic approach. One of these is the scope of the obligation to consult in terms of subject and type of measure. It is also a controversial issue that which WTO bodies are under consultation obligation and whether it specifically extends to the WTO adjudication process (panels).

Besides, there are issues that need to be discussed and clarified further regarding the legal status of IMF inputs in the WTO. Particularly the WTO panels have had controversial stance regarding the IMF consultations themselves being mandatory and the inputs obtained from the IMF during these consultations being binding on the WTO side. In addition, there are issues that need clarification, evaluation and discussion regarding the functional status of IMF inputs.

There are studies that address certain aspects of these issues. In this context, the aim of this study is to contribute to the clarification of the mentioned controversial issues within the scope of WTO - IMF consultations.

In this study, as a method, the existing literature is examined and discussed; legal texts are analyzed; and the WTO's case law is consulted.

INTRODUCTION

World Trade Organization (WTO) and International Monetary Fund (IMF) are two dominant international organizations in terms of their membership structure, and represent the trade and finance pillars of the global economic governance order established after the Second World War (WWII). Trade and finance are closely interconnected issues, therefore, they were dealt together when the post-war global order were designed. In this regard, negotiators made simultaneous efforts for the preparations of a multilateral agreement (the General Agreement on Customs Tariffs and Trade - GATT) to provide rapid customs reductions in goods trade and the establishment of the International Trade Organization (ITO), which was envisaged to be responsible for the operation of international trade. The GATT was put into force in a temporary status as of January 1, 1948. The ITO became stillborn as it could not get approval from the US Congress, and the GATT, though designed temporarily, operated as a *de facto* international organization with its gradually developing institutional structure and expanding area of responsibility until the WTO was established in 1995. On the other hand, the IMF, which represents the institutional structure of the financial pillar of the system, was established in 1944, just before the end of the WWII.

The close interaction between trade and finance has brought about the need for an advanced level of coordination and cooperation between relevant organizations. The issue of cooperation was not included in the IMF Articles[1] as the ITO Charter and

[1] The official name of the agreement establishing the IMF is "The Articles of Agreement of the International Monetary Fund". In this study, we use "IMF Articles" as an abbreviation.

the GATT text had not yet been completed when the IMF was established. However, in various provisions of the GATT, GATT Contracting Parties[2] were obliged to consult with the IMF on certain matters falling within the IMF's responsibility. This obligation has been carried over to the WTO period. The consultations in question are of a formal nature and include convention-based legal obligations for the GATT/WTO. Rules regarding the procedures for consultations have developed through secondary regulations and customs. Yet, there are issues open to debate regarding the scope of the consultations and the legal status of the binding nature and function of the inputs presented by the IMF. There are studies that address certain aspects of these issues. It is preferred to refer to the relevant literature when appropriate, rather than discussing it in a separate section. In this context, the aim of this study is to contribute to the clarification of the mentioned controversial issues within the scope of WTO - IMF consultations.

In this framework, in terms of study order, it covers, in Part I, the historical and institutional background of the WTO - IMF consultations; in Part II, the legal basis of the WTO's obligation to consult with the IMF; in Part III, the scope of the obligation to consult; in Part IV, the bindingness status of the inputs provided by the IMF in the WTO; in Part V, the functional status of IMF inputs in the WTO. As a method, the existing literature is examined and discussed; legal texts are analyzed; and the WTO's case law is consulted.

I. HISTORICAL AND INSTITUTIONAL BACKGROUND OF WTO - IMF CONSULTATIONS

In designing the new order after WWII, trade, finance (money) and investment (capital) issues were seen as closely interconnected and thus dealt together. In fact, the belief that the prerequisite for a functioning global trade system is the existence of a monetary system that would protect the world economy from shocks and imbalances had existed since the First World War (WWI). In this context, the inter-war period (1919-1939) witnessed significant efforts to make international trade and payments operational. Initiatives such as the return to the classical gold standard, the construction of an international monetary system based on the gold-exchange standard[3], the establishment of an international payments bank (bank for

[2] In the GATT text, the concept of "contracting parties" is employed as opposed to "member states" of the WTO Agreement (Marrakesh Agrement Establishing the WTO). On the other hand, Contracting Parties (with first letters upper case) is used to denote the highest decision-making body of the GATT. In this study, we employ the "contracting party/parties" (with lower case initials) to mean individual GATT countries whereas the "Contracting Parties" (with upper case initials) to signify the GATT's highest decision-making organ.

[3] In contrast to the classical gold standard in which the money supply was fixed on the physical gold stock, in the gold-exchange standard, national currencies were tied to the national currencies of certain central states that could be easily converted into gold. In this system, peripheral states would regulate their exchange rates by buying and selling gold-convertible central currencies such as the US Dollar and the British Pound, rather than directly using gold.

international settlements) that would play the role of the central bank of national central banks (1929 - Young Plan)[4] all were influenced by the special and unique economic and political conditions of the post-war period. Those initiatives remained inconclusive due to the factors such as political and social risks and the Great (Economic) Depression that broke out in 1929. As a result of the Great Depression, international cooperation became impossible as states began to chart their own paths. Therefore, the inter-war period witnessed intense currency wars, *beggar thy neighbor* policies and protectionist practices in trade.

Under these circumstances, global trade figures faced huge declines, especially during the 1930s. As a result, the idea of establishing an international organization responsible for the liberalization and supervision of international trade came to the fore in those years[5]. The US and the UK, the pioneers of this idea, referred, in the Atlantic Charter (Fourth Paragraph) they signed in 1941, to the goal of ensuring that all states have equal access to the raw materials and trade they need for their economic prosperity[6]. In the Master Lend-Lease Agreement (Article VII) of 1942, the goal of achieving an agreement that would be open to all other like-minded countries of the US and the UK and that would ensure the elimination of discriminatory practices, tariffs and other barriers to international trade was expressed once more again[7]. The commitments in these two instruments led to three conferences that would reveal the institutional actors of the post-war global economic order. As a result of the Bretton Woods Conference held in July 1944, the International Bank for Reconstruction and Development (IBRD) and the IMF; and as a result of the Dumbarton Oaks Conference held in August - October 1944, the United Nations (UN) Organization was established. At the Bretton Woods Conference, despite the establishment of the IBRD and the IMF, the issue of trade was not discussed, but the need to establish a similar and complementary organization for trade was confirmed[8]. Accordingly, the ITO Charter emerged as a result of the Havana Conference held between November 1947 and March 1948[9]. In this respect, all these organizations should be seen as a

4 The Bank of International Settlements was established on March 2, 1929, but was stillborn due to the Great Depression that started with the crash of the US stock market on October 24, 1929 - Black Thursday (Elli Louka, *The Global Economic Order the International Law and Politics of the Financial and Monetary System* (Cheltenham: Edward Elgar Publishing, 2020), 192-193).

5 Craig VanGrasstek, *The History and Future of the World Trade Organization*, (Geneva: WTO Publications, 2013), 43.

6 For the text of the Atlantic Charter (1941) see https://usa.usembassy.de/etexts/democrac/53.htm Access Date: 18 February 2023.

7 For the text of Master Lend-Lease Agreement see https://avalon.law.yale.edu/20th_century/decade04.asp Access Date: 18 February 2023.

8 John Howard Jackson, *The World Trade Organization: Constitution and Jurisprudence* (London: Royal Institute of International Affairs, 1998), 15-16.

9 For more detailed information on pre-war and wartime developments, see. VanGrasstek, *The History and Future of the World Trade Organization*, 40; 43-45.

part of the whole post-war global economic architecture. In this architecture, the IBRD, the IMF and the ITO, respectively, would be in charge of capital flows/ investments, financial flows/money and goods flows.

Meanwhile, states that desired to reap the fruits, without delay, of the post-war positive atmosphere of liberalization in trade started to negotiate a multilateral agreement (the GATT) that would provide rapid customs reductions in goods trade, simultaneously with the preparatory work for the ITO Charter[10]. It was aimed to add the GATT text to the ITO Charter and for these two to enter into force simultaneously. However, the GATT was put into effect on January 1, 1948, with a provisional application protocol until the ITO's approval[11]. The GATT, which has a rather narrower-scope compared to the ITO, was not submitted to the approval of national parliaments by the Contracting Parties in order not to jeopardize the approval of the ITO, but the fate of the ITO was awaited to be submitted for approval as a package of two[12]. Yet, after a long waiting period and multiple attempts, the ITO Charter could not receive approval from the US Congress and was withdrawn by President Truman in 1951. Thus, the GATT had never submitted to ratification procedures in national parliaments by the party-countries and continued to be implemented with an interim protocol until the establishment of the WTO in 1995. However, it worked like an international organization with its organs and institutional structure that developed over time. A comprehensive and well-equipped organizational structure that would be responsible for international trade, which could not be achieved with the ITO, was realized, with a delay of approximately 50 years, as a result of the Uruguay Trade Negotiations (1986 - 1994). The trade and finance interaction and the deficiencies in the functioning of that had been on the agenda throughout that 50-year period[13] and formed an important item of the Uruguay Negotiations.

As the historical background reflects, trade and finance issues were specifically dealt together due to the strong interaction between them. The vitality and stability of trade flows depend on the healthy functioning of international money flows and therefore on the existence of a sound and stable international financial

10 Jackson, *The World Trade Organization: Constitution and Jurisprudence*, 17-18.

11 For the text of the provisional application protocol see the Analytical Index of the GATT, p. 1071-1084. Access Date: 18 February 023. https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/prov_appl_gen_agree_e.pdf.

12 Jackson, *The World Trade Organization: Constitution and Jurisprudence*, 18.

13 For instance; In the 1973 Tokyo Ministerial Declaration that initiated the Tokyo Trade Negotiations, it was stated that policies aimed at liberalizing global trade would not be successful without a monetary system that would protect the world economy from shocks and imbalances. Again, in the Decision on Exchange Rate Fluctuations and Their Effects on Trade, adopted at the 40th Meeting of the GATT Contracting Parties in 1984, it was pointed out that the relationship between instability in foreign exchange markets and international trade should be taken into account in IMF activities aimed at reviewing the functioning of the international monetary system.

system. On the other hand, properly functioning trade flows also have a reducing effect on the risks of balance of payments (BOP) problems and financial crises. For these reasons, the duties of the WTO and the IMF are complementary to each other. This situation is reflected in the legal instruments of both organizations.

As a result of the Uruguay Negotiations, the scope of GATT - IMF relations defined in the GATT 1947 was expanded to the GATT 1994[14] and some other agreements annexed to the WTO Agreement. At the end of Uruguay Negotiations, a series of texts addressing WTO - IMF cooperation emerged: (1) The Declaration on the Relationship of the World Trade Organization with the International Monetary Fund (2) The Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking (3) Marrakesh Agreement Establishing the World Trade Organization (Article III - Functions of the WTO; Article V - Relations with Other Organizations). In order to implement the mandatory provisions in the mentioned documents, a WTO - IMF Cooperation Agreement was signed between the two organizations on 9 December 1996, shortly after the establishment of the WTO[15]. Beyond these general arrangements on cooperation and coordination, the WTO's legal texts, especially the GATT, also contain more specific provisions regarding the cooperation with the IMF. These provisions impose an obligation on the WTO to consult with the IMF on certain matters, as a specific form of cooperation. This obligation of consultation constitutes the area of interest of this study.

On the other hand, some provisions of the IMF Articles are specifically related to trade. Article I includes the following provisions that outline the trade - finance relationship, as well as the development and stability of the global monetary and financial system, which is the main task of the IMF: (1) To facilitate the expansion and balanced growth of international trade (2) To help establish a multilateral payments system for current transactions among member states and eliminate foreign exchange restrictions that hinder the growth of world trade. The main functions of the IMF, which do not specifically refer to the trade connection, also contribute to international trade, such as providing support to improve exchange rate stability and correct the BOP problems of states. Relatedly, Article IV of the IMF Articles prohibits exchange rate manipulations for the purpose of preventing effective BOP adjustments and gaining an unfair competitive advantage over

[14] Original GATT 1947 text, with some complementary provisions and documents, was transferred to the WTO Agreement as a part of GATT 1994, without any changes in its text.

[15] The WTO-IMF Cooperation Agreement determines the basic principles of cooperation to ensure further harmony between the two organizations in the formulation of global economic policies. It codifies the existing procedures for BOP consultations that had developed in the GATT era, such as on the participation of an IMF observer in meetings of the WTO Committee on Balance of Payments Restrictions (BOP Committee) and the preparation of confidential background documents by the IMF. For the text of the treaty see https://www.imf.org/external/pubs/ft/history/2012/pdf/3b.pdf Access Date: 18 February 2023.

other countries. Similarly, states are prohibited from imposing restrictions on payments for current international transactions without IMF approval (Article VIII - Section 2). The IMF welcomes requests for such kind of restrictions only if they are necessary for the BOP, not discriminatory and applied temporarily. Likewise, discriminatory or multiple exchange rate practices are prohibited, except in cases permitted in the IMF Articles (Article VIII - Section 3).

II. THE WTO'S LEGAL OBLIGATION TO ENTER INTO CONSULTATIONS WITH THE IMF

In WTO law, as a specific form of cooperation, there is an obligation, to consult with the IMF and to comply with the inputs from the IMF on certain matters related to external payments (GATT Article XV:2). One part of the consultation obligation is designed in connection with the BOP exceptions. WTO law, in general sense, covers basic obligations for the liberalization of trade and certain exceptions to those. Thus, member states are given the opportunity to continue their practices and regulations which are normally contrary to WTO law[16]. Among the exceptions, there are also those related to the BOP issues. In this context, member states facing one of the problems of BOP, liquidity or reserves are granted an exception to impose trade restrictive measures that are otherwise prohibited. The provisions of Article XII and Article XVIII of the GATT govern the BOP exceptions[17]. While all member states can apply for the Article XII, Article XVIII contains only developing members.

Article XII covers the restrictive measures that aim to protect external financial position and the BOP and brings an exception to the general ban of Article XI on quantitative restrictions. Thus, Member States may impose restrictions on imports based on value or quantity in order to protect the external financial position and the BOP. Article XII:2(a) establishes the criterion of "necessity" for such restrictions. Accordingly, permitted import restrictions should not exceed what is necessary (i) to prevent "the imminent threat of a serious decline" or to cease a "serious decline" in monetary reserves, or (ii) to ensure a "reasonable rate of increase" in reserves in case the monetary reserves are "very low".

GATT Article XVIII regulates BOP exceptions for developing member states and is written very similarly to Article XII but imposes less strict conditions. In

[16] For exceptions in WTO Law, see Mustafa Göker, "Ukrayna - Rusya krizi ve DTÖ hukuku: Güvenlik istisnalarının yükselişi mi?", *Ömer Halisdemir Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 16, no. 2 (April 2023): 387-88.

[17] The application principles of the BOP exception are detailed in the "Understanding on the Balance of Payments Provisions of GATT 1994 (BOP Understanding)", which is a complementary and integrated part of GATT 1994. For its text see https://www.wto.org/english/docs_e/legal_e/09-bops_e.htm Access Date: 19 February 2023. Additionally, for technical information see Technical Information on Balance of Payments https://www.wto.org/english/tratop_e/bop_e/bop_info_e.htm Access Date: 19 February 2023.

Article XVIII:1, exempted countries are defined as "those whose economies can only support a low standard of living and are in the early stages of development[18]". Through Article XVIII, the development needs of such economies were acknowledged and certain exceptions from the GATT rules were provided for that aim. Some of the exceptions are related to external financial situation. It is regulated in the paragraphs 9 to 12 of Article XVIII:B. In Paragraph 9, a contracting party is allowed to control the overall level of imports by restricting the quantity or value of goods to be imported, in order to (i) safeguard the external financial position and (ii) ensure an adequate level of reserves for the implementation of the economic development program. Necessity criteria similar to that of Article XII:2(a), but less strict, should be met. Accordingly, Article XVIII:9(a) does not include the "imminent" (threat) criterion of Article XII:2; Article XVIII:9(b) includes "insufficient" (monetary reserves) instead of "very low" (monetary reserves) of Article XII:2.

BOP exceptions are also included in the General Agreement on Trade in Services (GATS). Article XII of the GATS contains exception provisions for trade in services, both generally and for the needs of development or transition programs of developing or transition economies. Article XII is written in a way that is very similar but not equivalent to the above-mentioned articles of the GATT (XII and XVIII)[19]. According to Article XII:1; (i) Member States, in response to serious BOP and external financial difficulties or threats thereof, may adopt or maintain restrictions on trade in services on which it has specific state commitments, including on payments or transfers for transactions related to such commitments, and (ii) Member States may take restrictive measures to maintain sufficient levels of financial reserves to implement economic development or transition programs.

One of the conditions for applying for BOP exceptions is that the relevant state must hold consultations with GATT Contracting Parties (BOP Committee)[20]. The pre-conditions to be met by applicant country in consultations are provided in GATT Article XII:4. Besides, The BOP Committee must fulfill its obligation to cooperate and consult with the IMF during the consultation process with that country in order to evaluate her request to benefit from the BOP exception. GATT Article XV:1 contains a general provision on this issue and obliges the Contracting Parties to seek

[18] In this study, for ease of use, the concept of "developing country" is preferred for all the countries that are within the scope of Article XVIII (including underdeveloped countries).

[19] GATS Article XII, GATT Article XII and GATT Article XVIII provisions are analogous but the GATS has more complex structure because it extends to the payments relating to the services, which overlaps with the IMF's jurisdiction over payments and transfers for current international transactions.

[20] According to Paragraph 5 of BOP Understanding, BOP Committee must consult with the member state that takes the restrictive measure for BOP purposes.

cooperation between the GATT and the IMF in order to ensure coordinated policies on trade measures and foreign exchange issues. On the other hand, Article XV:2 requires Contracting Parties to engage in full consultations with the IMF in all cases where they are invited to consider questions relating to monetary reserves, BOP and foreign exchange arrangements. It also refers to consultations with the BOP Committee set out in Articles XII and XVIII:9. In this context, the IMF presents statistical findings on applicant country's situation relating to foreign exchange, monetary reserves and BOP, and other factual information and determinations regarding the compliance of the national measure at stake with the IMF Articles (or special exchange agreement, if any[21]). Article XV:3 obliges the WTO to endeavor to conclude an agreement on the procedures for consultations with the IMF. The WTO - IMF Cooperation Agreement dated 1996, was put into force as a result of this obligation among other cooperation issues.

III. THE SCOPE OF CONSULTATIONS

GATT Articles XII and XVIII, which regulate BOP exceptions, took their current form with the amendments made in 1957[22]. In the GATT 1947 text, restrictive measures for BOP purposes were considered as an exception to the general prohibition on quantitative restrictions (Article XI) which was under the realm of Working Party I on Quantitative Restrictions[23]. However, in the WTO period, the scope of the BOP exception exceeded the ban on quantitative restrictions. With the Declaration on the Relationship of the WTO with the IMF, as annexed to Uruguay Round Final Act, the GATT - IMF relationship established by the provisions of the GATT 1947 was expanded to include all WTO Agreement's Annex-1A agreements[24]. Furthermore, some Annex-1A agreements were made indirectly subject to the GATT on the matters involving cooperation with the IMF, by reference to the GATT provisions on BOP issues[25].

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21 GATT Article X:6 requires GATT parties that are not IMF members to realize their membership to the IMF within a period determined by the Contracting Parties in consultation with the IMF, or, if they cannot do so, to sign a special foreign exchange agreement with other contracting parties. There are rare examples. For instance, Taiwan became a member of the WTO in 2001 as a "customs territory", but since customs territories could not become an IMF member, its IMF membership was not possible.

22 Technical Information on Balance of Payments.

23 Report of Review Working Party I on Quantitative Restrictions, L/332/Rev.1, 28 February 1955, Access Date: 21 February 2023. https://www.wto.org/gatt_docs/English/SULPDF/90690002.pdf.

24 For the text of Declaration on the Relationship of the WTO with the IMF, see https://www.wto.org/english/docs_e/legal_e/34-dimf_e.htm Access Date: 21 February 2023.

25 For example, the provisions of Article 3 of the Trade-Related Investment Measures (TRIMS) Agreement, which adopts all exception provisions in the GATT (including BOP exceptions); the provisions of Article 4 of the TRIMS Agreement, which provides for exceptions to developing member states from the National Treatment obligation and the general ban on quantitative restrictions.

On the other hand, a close examination of the provisions of Article XV:2 shows that the WTO's obligation to consult with the IMF is limited to certain matters. The obligation for "full consultations[26]" is regulated in such a way that, in terms of subject matter, it is limited to the problems related to "monetary reserves, BOP or foreign exchange arrangements". Thus, the first sentence of Article XV:2 states that: "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." These provisions are comprehensive in nature and drafted with a scope that goes beyond the BOP Committee's consultations on BOP exceptions. In this respect, as will be discussed below, it paves the way for the interpretation of the obligation for consultation with the IMF beyond the BOP Committee to include other WTO bodies.

The WTO's obligation to consult with the IMF under Article XV:2 is also limited in terms of the type of measures. This issue was discussed in the case of *Argentina - Textiles and Apparel*. When the issue arose as to whether there was an obligation to consult with the IMF on an "adjustment measure" within the scope of an IMF-supported stabilization programme, the panel considered that the only measures listed in Article XV:2 (measures relating to foreign exchange, monetary reserves and BOP) required consultations with the IMF. It accepted the measures in XV:2 as a limited list and ruled that the adjustment measures under review did not require to consult with the IMF, on the grounds that they did not concern one of the issues listed[27]. The Appellate Body (AB) confirmed the panel's decision, stating that "there is an obligation to consult with the IMF

[26] Since different consultation procedures were provided for developing countries, a distinction was made between full and simplified consultations. Simplified consultations, a procedure intended for developing countries, were first adopted in 1972 (See Procedures for Regular Consultations on Balance-Of-Payments Restrictions with Developing Countries, L/3772/Rev.l, 10 January 1973 (As approved by the Council of Representatives on 19 December 1972). Access Date: 27 February 2023. https://docs.wto.org/gattdocs/q/GG/L3799/3772R1.PDF. Consultation procedures were later included in the BOP Understanding in the WTO period. In addition to simplified consultations (paragraph 5), the BOP Understanding also provides for full consultations (paragraph 8). According to the provisions of these two documents, the BOP Committee may evaluate and decide whether to switch to full consultation procedures with the country applying simplified procedures. According to paragraph 8, the decision to move to full consultations is made on the basis of the factors listed in the 1972 rules. In addition, a developing country (except least developed countries) may use simplified consultation procedures at most twice in a row (no more than two successive consultations under simplified procedures), after which it must use full consultation procedures. In full consultations, the IMF submits to the BOP Committee a document on current economic developments and an official statement, including, *inter alia*, BOP statistics. In the case of simplified consultations, the IMF provides documentation but not formal statement; besides, BOP statistics provided by the IMF cannot be consulted unless consultations are converted into full consultations by the BOP Committee (Procedures for Regular Consultations on Balance-Of-Payments Restrictions with Developing Countries, parag. 3).

[27] WTO, Argentina: *Measures Affecting Imports of Footwear, Textiles, Apparel and other Items-Report of the Panel* (27 November 1997) WT/DS56/R [6.79].

only on matters expressly enumerated in Article XV:2[28]. This decision of the WTO judiciary should be approached with caution. In this regard, it should be taken into consideration that many similar measures developed later were not listed within the scope of Article XV, since tools such as adjustment programs were not yet implemented by the IMF in those years when the GATT 1947 text was negotiated[29]. In such cases, it seems the most appropriate path for panels to adopt the "dynamic interpretation[30]" approach as was used in some other disputes and became a customary rule of interpretation in the WTO, thus interpreting the provisions and terms of the treaties more broadly in the light of contemporary needs and developing knowledge. In this regard, the IMF, in a notification of its sent to the WTO Dispute Settlement Body (DSB), under the *Argentina - Textiles and Apparel* case, stated that there was no obligation to consult under Article XV:2, yet, in order to ensure wider cooperation and to better understand the measure challenged, arguments of the relevant member states and the context of the case, the panel should have consulted with the IMF[31].

On the other hand, Article XV:9 makes a distinction between "exchange controls or exchange restrictions" and "import or export restrictions or controls" and regulates that exchange measures may be taken provided that they comply with the IMF Articles (or the relevant special exchange agreement, if any). When Articles XV:9 and XV:2 are interpreted together, the obligation to consult with the IMF depends on the measure being a foreign exchange measure. This issue was investigated in a dispute initiated by the UK in the GATT period (1952) due to a tax imposed by Greece on foreign currency to be purchased for import purposes (*Greece - Import Duties* case). In this dispute, although there had discussions on the criteria that could be employed to determine whether the measure in question was exchange control or trade restriction, no ruling was given on the issue[32].

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28 WTO, *Argentina: Measures Affecting Imports of Footwear, Textiles, Apparel and other Items-Report of the Appellate Body* (27 March 1998) WT/DS56/AB/R [84].

29 Deborah Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", In *Current Developments in Monetary and Financil Law (Vol. 3)* (International Monetary Fund, 2005), 893.

30 Dynamic interpretation is a principle of law that has increasingly been used and accepted in international courts such as the European Court of Human Rights and the International Court of Justice, as well as in the WTO judiciary (Joost Pauwelyn & Manfred Elsig, "The Politics of Treaty Interpretation: Variations and Explanations Across International Tribunals", In *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, eds. Jeffrey L. Dunoff & Mark A. Pollack (Cambridge University Press, 2012), 462).

31 Andrew D Mitchell & Elizabeth Sheargold, *GATT Art.XV: Exchange Arrangements*, Georgetown Business, Economics & Regulatory Law Research Paper No. 1507253, November 2009, parag. 15.

32 *Greece Import Duties on Products Specified in Sechedule XXV* (1952) GATT G/27-IS/51 (For the relevant documents and panel report see https://gatt-disputes.wto.org/dispute/gd-13 Access Date: 31 March 2023).

As experienced in the *Greece - Import Duties* case, it is difficult to distinguish between foreign exchange and trade measures. It is often difficult or impossible to characterize whether a measure is financial, commercial, or both[33]. While there is no provision in the GATT on how to distinguish between them, the IMF clarified the issue to a certain extent with a decision dated June 1, 1960[34]. Accordingly, a measure is a foreign exchange measure if it involves a direct government restriction on the availability or use of foreign currency[35]. In this context, a limitation on payments for imports is an exchange control and falls within the IMF's jurisdiction; whereas a restrictive measure on trade in goods (such as an import ban or quota) which is the reason for the payment is a trade restriction and falls within the jurisdiction of the WTO[36].

A similar debate regarding the distinction between foreign exchange and trade measures was also brought up in the WTO-era *Dominican Republic - Import and Sale of Cigarettes* case. Against a commission fee charged by Dominican Republic on the sale of foreign currency and calculated on the value of imported cigarettes, Honduras filed a complaint alleging the fee is contrary to the provisions of GATT Article II.1(b) (additional customs duties). Dominican Republic, in its defense, claimed that the fee in question was a "transitional measure" within the scope of the tax reform and stabilization program implemented with the IMF. The WTO panel referred the issue to the IMF to determine whether the measure at stake was a foreign exchange measure within the meaning of Article XV:9(a). The IMF conveyed that the fee received from the sale of foreign currency was not a foreign exchange measure according to the 1960 Decision[37].

Within the scope of the consultations, IMF inputs that the WTO is obliged to accept were also specifically listed. According to the provisions of Article XV:2, the WTO is under obligation to accept three types of instruments from the IMF: (i) statistical findings (ii) other facts (iii) IMF's determinations as to whether an action by a member in exchange matters is in compliance with IMF Articles or special foreign exchange agreement (if any).

As to whether the obligation to consult with the IMF covers all bodies of the WTO, it is clear that BOP Committee has an obligation for consultations in

33 Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", 895.

34 IMF, "Decision on Payments Restrictions and Multiple Currency Practices, Article VIII and Article XIV, 1034-(60/27), 1 June 1960", Selected Decisions and Selected Documents of the IMF, Thirthy-Fifth Issue, p. 561-563, 2010, Access Date: 31 March 2023. https://www.imf.org/external/pubs/ft/sd/2011/123110.pdf.

35 Mitchell and Sheargold, *GATT Art.XV: Exchange Arrangements*, parag. 7.

36 Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", 879.

37 WTO, *Dominican Republic: Measures Affecting the Importation and Internal Sale of Cigarettes-Report of the Panel* (26 November 2004) WT/DS302/R [7.143]-[7.145].

the assessment process of member states' applications for permission under BOP exceptions of Articles XII and XVIII. GATT period practice confirms that. At this juncture, the question arises whether the obligation to consult with the IMF extends to the dispute settlement process and therefore to the panels[38]. In GATT Article XV:2, the obligation in question is introduced for the GATT Contracting Parties and is written in a way that is not limited to any specific body. It is possible to divide Article XV:2 into two parts. First part, as follows, is composed of the first two sentences of the Article XV:2 and written in a comprehensive manner in the sense that there is no specific reference to any WTO body:

> "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 second part is the third sentence of the Article XV:2 and refers to specifically a member state's consultations with the BOP Committee under Articles XII and XVIII, which requires the BOP Committee to consult with the IMF on certain issues:

> "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."

Decision-making procedures in the GATT and the WTO also support the interpretation that the obligation to consult with the IMF is not limited to a specific body and process. In the GATT period, it was the BOP Committee to carry out the consultations on BOP exceptions with the applicant contracting party but exception permissions were concluded by the GATT Council on behalf

[38] Since the appeal process is limited only to the issues of law and legal interpretations in panel reports (Article 17.6 of Understanding on Rules and Procedures Governing Settlement of Disputes - DSU) and covers no collection of new evidence (factual information), the obligation to consult with the IMF under Article XV:2 does not extend to the AB. Therefore, this study, in that regard, only focuses on the panel process.

of the GATT Contracting Parties. In the WTO period, although decision-making are facilitated with reforms, decisions are still finalized in high-level decision-making bodies. For example, panel and appeal reports are concluded in the meetings held by the General Council under the title of DSB.

Case law would be enlightening for WTO judiciary's stance regarding scope of obligation in terms of organs. GATT panels saw no harm in resorting the provisions of GATT Article XV:2. The predominance of the diplomatic/political nature of the GATT period decision-making processes may have been effective in panels' position. The institutional and decisional structure of the GATT period did not allow the panels to act as an autonomous judicial body as they do, to a certain extent, in the WTO period. In the GATT period, there are examples of cases in which the need to apply to the IMF for consultations arose. In *Japan - Thrown Silk Yarn* case initiated against Japan in 1976, the GATT Council assigned a preliminary working group to consult with the IMF within the scope of Article XV:2. However, there is no mention of consultations with the IMF in the document establishing the panel. Neither is there information about consultations with the IMF in the final panel report. The dispute was resolved by mutual agreement in 1978[39]. Later, in *the Republic of Korea - Restrictions of Imports of Beef* dispute, the panel consulted with the IMF under Article XV:2 for information on defendant South Korea's reserves and BOP situation and to determine the compliance of the measure in question with the provisions of the IMF Articles[40]. The Panel referred to the IMF based on the provisions of GATT Article XV and directly used the information and findings of the IMF.

But however, WTO judiciary remains distant in considering consultations with the IMF binding on itself. In a limited number of disputes, WTO judicial bodies refrained from a detailed legal interpretation on the issue. In practice, panels chose to invoke, instead of binding provisions of Article XV:2, Article 13 of the DSU which gives them the right to "investigate and obtain all kinds of information needed to solve the dispute". There are significant differences between GATT Article XV:2 and DSU Article 13 in terms of binding force. While applying to the IMF is part of a consultation obligation under GATT Article XV:2, panels are given a wide discretion in DSU Article 13.

The distinction between GATT Article XV:2 and DSU Article 13 has made it unclear, in practice, whether the obligation to consult with the IMF includes panels. In *Argentina - Textiles and Apparel* case, the AB considered the consultations

[39] For information and documents regarding the case see https://gatt-disputes.wto.org/dispute/gd-97 Access Date: 21 May 2023.

[40] *Republic of Korea Restrictions on Imports of Beef* (1989) GATT L/6504-36S/202, L/6505 - 36S/234, L/6503 - 36S/268. For documents of cases see https://www.wto.org/english/tratop_e/dispu_e/gatt_e/88beefau.pdf; https://www.wto.org/english/tratop_e/dispu_e/gatt_e/88beefnz.pdf; https://www.wto.org/english/tratop_e/dispu_e/gatt_e/88beefus.pdf Access Date: 19 May 2023.

with the IMF at the initiative of the panels, with reference to Article 13 of the DSU, and stated that there is no requirement, in Article XV:2, for the panels to consult with the IMF[41]. It ruled that panels may only be advised, but not obliged, to engage in consultations with the IMF and request determination and evaluation thereof regarding "adjustment measures" not expressly listed in Article XV:2[42]. Since the AB justified its decision by referring to the types of measures within the scope of consultations (explicitly enumerated measures) rather than whether the obligation to consult in Article XV:2 extends to the panels in general, it would not be correct to understand it in a general sense. Furthermore, it is possible to infer from its reference to the measures expressly mentioned in Article XV:2 that if one of those measures had been in question, the panel's obligation to consult with the IMF under Article XV:2 would have been arised.

In a similar vein, the panel of *India - Quantitative Restrictions* case, when applying to the IMF, relied on the general powers granted by DSU Article 13 to collect information and evidence. In this way, by resorting to DSU Article 13, the panel gave the message that the issue of consulting the IMF was at its own initiative[43]. On the other hand, it refrained from entering into a legal analysis regarding the obligation to apply to the IMF. At the appeal stage, the AB stated that the issue had been discussed in detail by the parties before the panel, but the panel had not found it necessary to make a decision on the issue specifically for the case at hand, and it refrained from taking a position on the issue since this aspect of the dispute was not appealed[44].

It would not be wrong to associate the WTO judiciary's careful avoidance of taking a clear stance that consultations with the IMF are binding for the dispute settlement process with its sensitivity to strengthen its place as an independent judicial body in international law circles and to see itself as an autonomous international court[45]. However, there is no specific provision in GATT and WTO texts stating that the dispute resolution process and WTO panels are excluded from the obligation to consult with the IMF. First of all, the obligation in GATT Article XV:2 is more specific than DSU Article 13 and has a *lex specialis* nature. On the other hand, when a member state continues to implement the measure

41 WTO, *Argentina: Report of the Appellate Body* [84].

42 WTO, *Argentina: Report of the Appellate Body* [84].

43 WTO, *India: Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products-Report of the Panel* (6 April 1999) WT/DS90/R [5.13].

44 WTO, *India*: *Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products-Report of the Appellate Body* (23 August 1999) WT/DS90/AB/R [152].

45 In particular, accusations against the AB from the US have led to the blocking of the elections for the AB members since 2019, and the appeal mechanism has become inoperable. For a study on the subject, see Mustafa Göker "Küresel Ticaret Kurallarından Kaynaklı Uyuşmazlıkların Çözümünde Temyiz Sorunu", In *Sosyal Bilimlerde Güncel Meseleler*, eds. Çiğdem Çadırcı & Hatice Aztimur (Konya: Çizgi Kitabevi, 2022), 46-74.

in question despite the conclusion, in the BOP Committee, that the restrictive measures implemented for BOP reasons are not in accordance with WTO and/or IMF rules, other states whose interests are harmed have the right to apply to WTO dispute settlement procedures. In the process of resolving such disputes, WTO panels may request statistical and factual (evidentiary) information from the IMF, in addition to those submitted to the BOP Committee. The fact that the IMF is not granted the right to participate in the meetings of WTO dispute settlement bodies with observer status does not mean that the obligation to consult under Article XV:2 does not extend to the WTO panel process.

The IMF's observer status in WTO bodies was regulated by the WTO - IMF Cooperation Agreement in 1996. According to paragraph 6, WTO is under the obligation to invite the IMF to send an observer to the meetings of the Ministerial Conference, the General Council, the Trade Policy Review Body, the Trade and Development Committee, the Regional Trade Agreements Committee, the Committee on Trade-Related Investment Measures and their relevant subsidiary bodies. However, the Committee on Budget, Financing and Management, the DSB and the panels are excluded from observership status of the IMF. For the DSB meetings, the WTO invites observers only where the issue of dispute under consideration relates to the IMF. Similarly, as a result of the consultations between the WTO and the IMF Secretariat, in cases where it is concluded that participation is in the interest of both organizations, the IMF is invited to participate with observer status to the meetings of the DSB to be held on the issues other than dispute resolution. According to the procedures established in 1970, this invitation is made separately for each consultation process with a communication sent to the IMF by the WTO Director General, and consultations with the IMF are carried out before the consultations with the relevant member state in the BOP Committee[46]. On the other hand, Paragraph 8 provides that the IMF shall inform in writing the relevant WTO bodies (including WTO panels) dealing with the foreign exchange measures within its jurisdiction as to whether such measures comply with the IMF Articles. The introduction of such a provision must have been for the purpose of giving effect to the obligation to consult under GATT Article XV:2 rather than DSU Article 13. This would mean that the obligation to consult with the IMF would also extend to panels. However, it is not possible to conclude from these provisions that the IMF has a full-scale role in the WTO panel processes. Therefore, the IMF's function is limited to providing written responses to requests specific to a case[47].

46 GATT, Documentation for Article XII:4(b) and Article XVIII:3(b) Consultations; Note by the Chairman of the Committee on Balance-of-Payments Restrictions (L/3388), 27 April 1970, parag. 8.

47 Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", 885. When the WTO General Council approved the Cooperation Agreement, it also adopted a decision. In this decision, it is regulated that if the IMF wishes to present its opinions

IV. THE BINDINGNESS STATUS OF IMF INPUTS

The binding nature of the documentation and findings from the IMF for the WTO is closely related to the fact that consultations are treated as an obligation. The full consultation obligation set out in Article XV:2 also includes the acceptance of inputs sent by the IMF. In this respect, whether the obligation of consultations covers the dispute resolution process as discussed in the part III and the bindingness of the inputs are like two sides of the same coin. If there is an obligation to consult for the WTO, it is also necessary to accept that the inputs are binding. Accordingly, the WTO is obliged to accept the statistical findings and other facts presented by the IMF on foreign exchange, monetary reserves and BOP, and the determinations as to whether an action of a contracting party/ member in foreign exchange matters complies with the provisions of the IMF Articles (or a special foreign exchange agreement, if any).

A similar obligation applies to IMF instruments obtained by the BOP Committee from the IMF during the consultations with a member state concerned on BOP exceptions under Articles XII:2 and Article XVIII:9. In this context, BOP Committee (the Contracting Parties), in reaching final decision, shall accept the determinations of the IMF as to what constitutes (i) a serious decline in the contracting party's monetary reserves, (ii) a very low level of its monetary reserves or (iii) a reasonable rate of increase in its monetary reserves; and as to the financial aspects of other matters covered in consultation in such cases (Aritcle XV:2). Although Article XII:2(a)(i) and Article XVIII:9(a) include the element of "threat of serious decrease in monetary reserves" as well as the "actual" serious decrease in monetary reserves, the "threat" is not included for the determinations to be made by the IMF in the last sentence of Article XV:2. We consider that this is a conscious choice of negotiators, thus the threat situation is left to the discretion of the relevant contracting party/member state that would take precaution[48].

GATS Article XII includes a similar obligation for recognition regarding restrictions on trade in services on BOP grounds. According to the Article

to the panel regarding the compatibility of a foreign exchange measure with the IMF Articles, it forwards a letter containing its opinions to the Chairman of the DSB. The Chairman informs the panel of the existence of such notification, and the notification remains confidential except for the panel and the disputing parties unless the panel decides otherwise (Decision Adopted by the General Council Concerning Agreements between the WTO and the IMF and the World Bank at Its Meeting on 7, 8, 13 November 1996, WT/L/194, parag. 4(b)). However, the IMF Executive Board only approved the Cooperation Agreement in its very form (Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", 885; IMF, "Relations with the WTO and Fund-WTO Cooperation Agreement, 11381-(96/105), 25 November 1996", Selected Decisions and Selected Documents of the IMF, Thirthy-Eigth Issue, p. 934-943, 2016).

48 A similar example in which discretion is left to the member states is found in GATT Article XXI, where security exceptions are regulated. It includes the wording of "*deemed necessary* for the protection of essential security interests".

XII:2(b), BOP restrictions must, in addition to other conditions, comply with the IMF Articles[49]. In addition, according to Article XII:5(a), the member state taking the measure is obliged to consult with the BOP Committee. Thus, the BOP Committee is obliged to consult with the IMF during the necessary consultations with the member state taking the restrictive measure and to accept all statistical findings, other facts and determinations to be presented by the IMF regarding foreign exchange, monetary reserves and BOP. Moreover, according to Article XII:5(e), the conclusions of consultations shall be based on the IMF's assessment of the BOP and external financial situation of the consulting member. Accordingly, Article XII:5(e) imposes two obligations on the BOP Committee: (i) to "accept" the statistical findings and other facts presented by the IMF on foreign exchange, monetary reserves and BOP (ii) to base conclusions on IMF assessments regarding the BOP and external financial situation of the applicant member. The second element is not included in GATT Article XV:2.

A distinction is made between full and simplified consultation procedures in terms of bindingness. According to the 1972 rules (L/3772.Rev.1) in which simplified procedures were first adopted and the BOP Understanding, the BOP Committee has the authority to evaluate and decide whether to switch to full consultation procedures for the country with simplified procedures. In simplified consultations, the IMF provides BOP statistics, but they are not used until the procedures are converted into full consultations by the BOP Committee[50].

Although the relevant articles of the GATT are written in a binding manner, different opinions are put forward in practice. The consultations carried out in the BOP Committee during the GATT period are informative about the interpretation and implementation manner of the obligation in question. For example; the report of the working group written for the consultations carried out in the BOP Committee on the "import deposit" put into force by the UK on the grounds of BOP issues in 1968, included the expressions "in the light of the findings of the IMF" and "taking into account this finding[51]"; the report of the working group for the consultations regarding the temporary import surcharges implemented by the US in 1971, again for BOP reasons, included the expression "taking into account the findings of the IMF[52]". Likewise, the binding nature of IMF instruments was discussed during the discussion of the BOP Committee's report

49 GATS Article XII does not include "special foreing exchange agreement, if any" as opposed to GATT XV:2.

50 Procedures for Regular Consultations on Balance-Of-Payments Restrictions with Developing Countries, parag. 3.

51 GATT, First Report of the Working Party on United Kingdom Import Deposits (L/3193), 3 April 1969, parag. 17-18.

52 GATT, Report of the Working Party on United States Temporary Inport Surcharge (L/3573), 13 September 1973, parag. 7, 39.

on the consultations with Spain in 1973 in the GATT Council. The representative of Spain explained that he was of the view that the BOP Committee followed the IMF findings closely in concluding that the GATT's BOP provisions were no longer applicable to Spain. The representative of Uruguay stated that the IMF's report is not the only element that should be taken into consideration. She/He argued that the IMF report on the state of the BOP cannot be contradicted, but only the Contracting Parties are competent to judge the relationship between the BOP situation and the further liberalization of trade, and in this context, it is for the GATT to decide whether the measures taken by a contracting party are effective and whether they can be sustained. Some other contracting parties expressed the opinion that: "In the light of the provisions of Article XV:2 and the IMF findings, the conclusions of the BOP Committee could not have been different." The BOP Committee's report was adopted by the GATT Council[53].

Similar differences of opinion deepen when it comes to panel processes. According to one view in the literature, there is no binding obligation for panels to comply with IMF inputs. This view suggests that treating IMF findings and assessments as binding may hinder the fulfillment of the duty of objective evaluation assigned to panels in Article 11 of the DSU[54]. An opposing view argues that the provisions regarding the relations with the IMF are in the nature of special provisions (*lex specialis*), therefore the panel should give priority the obligation to accept the IMF inputs (GATT Article XV:2) over the obligation to make an objective assessment (DSU Article 11)[55]. Another argument in favor of the priority of Article XV:2 obligations is that the opposite situation (IMF inputs not being accepted as binding) may result in the litigants being able to present rebuttal counterfactuals and findings against IMF determinations and assessments[56].

Some secondary sources reduce the degree of bindingness. Negotiation history of treaties, which is accepted as a complementary source of interpretation in the customary law on treaty interpretation[57], shows that the provisions of Article XV:2 correspond to and are more or less identical to Article 24 of the ITO Charter[58]. In the discussions on the subject at the Havana Conference, it was stated that the provision in question does not aim to make the ITO an organization

53 Analytical Index of the GATT on Article XV, p. 431.

54 Marina Foltea, *International Organizations in WTO Dispute Settlement: How Much Institutional Sensitivity?* (Cambridge: Cambridge University Press, 2012), 195.

55 Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", 890-891.

56 Dukgeun Ahn, "Linkages between International Financial and Trade Institutions: IMF, World Bank and WTO", *Journal of World Trade* 34, no. 4 (2000): 25.

57 Vienna Convention on Law of Treaties, Article 32.

58 For Final Act of Havana Conference and related document see https://www.wto.org/english/docs_e/legal_e/havana_e.pdf Access Date: 24 February 2023.

subsidiary to the IMF, but only to clarify that the ITO, despite the IMF's findings, has the final decision authority on whether the restrictions are in accordance with the ITO rules[59].

The issue of bindingness was discussed in some WTO disputes. However, the WTO judiciary appears to have carefully avoided engaging in an analysis of the binding status of IMF inputs for panels. For example; In the *Argentina - Textiles and Apparel* case, the AB considered the consultations with the IMF as the initiative of the panels within the scope of the right to "seek and obtain all kinds of information" in DSU Article 13, and in this context, it decided that the panels could not be obliged to enter into consultations with the IMF, but could only be recommended. However, it based its ruling on the fact that the measures at stake were in the nature of "adjustment measures" which were part of an IMF-supported program and adjustments measures were not expressly listed in Article XV:2[60]. Thus, the AB ruled that not only consulting with the IMF but also the findings, facts and determinations from the IMF are not binding for WTO panels. However, considering the AB's interpretation of the bindingness is based on the fact that adjustment measures are not expressly enumerated in Article XV:2, it leaves the door open to the interpretation that if it were to the measures expressly mentioned in Article XV:2, it would be compulsory for panels to consult with the IMF and accept its inputs.

In *India - Quantitative Restrictions* case, the panel consulted with the IMF regarding India's BOP situation and used the IMF's findings and determinations in forming its decision. On the other hand, the panel did not find it necessary to conduct further analysis and make a ruling as to whether Article XV:2 requires consultation with the IMF or whether IMF determinations are binding[61]. India did not appeal this aspect of the issue, but appealed that the acceptance of the IMF findings by the panel without questioning was contrary to the panels' obligation to make an objective assessment of the facts in DSU Article 11, and claimed that the panel's attitude meant delegation of authority to the IMF[62]. The AB noted that the issue of bindingness was discussed in detail by the parties before the panel, but the panel did not find it necessary to make a ruling on the issue specifically for the case at hand, and since the issue was not appealed, it would refrain from taking a position on this issue, and only discussed whether the obligation to objectively evaluate the facts within the scope of DSU Article 11 was fulfilled[63]. The AB found that the panel's critical evaluation of the information from the IMF

59 Analytical Index of the GATT on Article XV, 431.

60 WTO, *Argentina: Report of the Appellate Body* [84].

61 WTO, *India: Report of the Panel* [5.13].

62 WTO, *India: Report of the* Appellate Body [146].

63 WTO, *India: Report of the* Appellate Body [152].

was sufficient to fulfill the objective assessment obligation of DSU Article 11 and rejected India's claim[64]. The "critical evaluation" requirement expressed by the AB is not compatible with the peremptory language of Article XV:2, besides, the negotiation history of the GATT does not support this position of the AB[65].

A similar position was adopted by the panel in the subsequent case of *Dominican Republic - Import and Sale of Cigarettes*. The panel sought the opinion of the IMF on whether the commission fee collected from the sale of foreign currency for the imports was a foreign exchange measure, but did not rely directly on the opinion of the IMF when making its ruling. Separately, it made its own analysis on the basis of the criteria determined in the IMF's Decision of 1960 and came to a conclusion which was parallel to the IMF's[66]. Thus, the panel avoided referring to the binding nature of the IMF's findings and preferred to use the expression "in agreement" with the IMF[67].

It matters, in the context of bindingness, that WTO panels, when applying to the IMF, rely on the general authority given to them by DSU Article 13 regarding the right to collect information and evidence. There are significant differences between GATT Article XV and DSU Article 13 in terms of binding force. While application to the IMF under GATT Article XV:2 is a part of the obligation to engage in consultations with the IMF on BOP issues, DSU Article 13 gives panels wide discretion to collect information and evidence from any source they deem appropriate. Based on DSU Article 13, panels gave the message that it was at their discretion to consult with the IMF and evaluate the input received from it. Despite the binding language of Article XV:2, the choice of this method by panels are deliberate and it would not be wrong to say that it is a result of panels' sensitivity regarding authority and bindingness. On the other hand, there are also views arguing that the provisions of DSU Article 13 do not grant any initiative to panels, on the contrary, they contain an obligation[68].

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64 WTO, *India: Report of the* Appellate Body [149]-[152].

65 Some authors with this view report that, according to the negotiation history of the GATT, Australia proposed the expression "The IMF's opinions will be given special weight" instead of "the Contracting Parties shall accept the IMF's determinations" in Article XV:2, but this suggestion was not accepted (Mitchell & Sheargold, *GATT Art.XV: Exchange Arrangements*, parag. 19).

66 In its evaluation according to the criteria in the 1960 Decision, the panel concluded that the commission fee collected from the sale of foreign currency was not a foreign exchange measure on the grounds that it was limited to imported goods and was calculated based on the cost of the imported goods, not the amount of foreign currency sold (WTO, *Dominican Republic: Report of the Panel* [5.52], [5.53], [7.144], [7.145]).

67 WTO, *Dominican Republic: Report of the Panel* [7.145].

68 According to some authors, for panels to collect factual information, technical support, expert opinion, legal interpretation, etc. is required for the fulfillment of the "objective assessment" obligation under DSU Article 11; it is not left to the discretion of panels (See Asif H Qureshi, *Interpreting WTO Agreements: Problems and Perspectives (Second Edition)*, (Cambiridge: Cambridge University Press, 2015), 78; Foltea, *International Organizations in WTO Dispute Settlement: How Much Institutional Sensitivity?*, 8).

V. THE FUNCTIONAL STATUS OF IMF INPUTS

IMF inputs obtained during the consultation process mainly play a role of factual reference source in the WTO. This concept refers to the existence of relevant factual conditions and evidence that would form the basis for a decision/ruling and aims to meet the need to establish the existence of factual realities. In this context, within the scope of GATT Articles XII, XVIII and XV, the statistical findings provided by the IMF on the situation of the relevant member state's foreign exchange, monetary reserves and BOP, all other information and determinations regarding the compliance of the measure with the provisions of the IMF Articles (or special foreign exchange agreement, if any) are used as a factual reference status in the WTO.

Among these elements, the legal nature of the determinations of conformity with the IMF Articles does not change the nature of the functional status of the input. Because the IMF does not evaluate the compliance with WTO law; its determinations regarding compliance with its own law provide factual reality (evidence) for the relevant WTO bodies in assessing compliance with WTO law. Since the provisions of Articles XV:1 and XV:4 make a clear distinction between exchange measures and trade measures and thus between the jurisdictions of the WTO and the IMF, WTO bodies do not have the authority to directly address the compliance of measures (which provide for exchange controls or restrictions) with IMF rules. Therefore, it is obliged to obtain a determination from the IMF as to whether a measure complies with IMF rules. The IMF decides whether a measure is a foreign exchange measure and, if so, whether it complies with the provisions of the IMF Articles. On the other hand, since the WTO panels have the authority to examine the compliance of a measure with the conditions in the relevant provisions of the GATT, the definition of the measure as a foreign exchange measure by the IMF does not remove it from the jurisdiction of the WTO panels. Additionally, there is no panel-like adjudication process within the IMF, otherwise could lead to forum competition with the WTO.

Discussions have been made in the previous lines (Chapter 3) on whether the obligation to consult with the IMF should be understood to extend to panel processes. The evidentiary use of IMF inputs as a source of factual reference in disputes before a WTO panel is an issue with more comprehensive dimensions. First of all, the gathering of factual evidence in a WTO dispute is limited to the panel stage only, thus the AB does not have the authority to collect new evidence; therefore, appealing work consists of addressing only legal issues. Panels derive their right to access to factual information primarily from the "inherent powers doctrine". Inherent powers are automatic ones arising from the mere nature of being a judicial body, enabling to carry out the duties entrusted

to it[69]. On the other hand, the provisions of DSU Article 11, which obliges the panels to make an objective assessment of the dispute before them, including the "facts", also constitute the legal basis for the panels' authority to collect evidentiary information. Specifically, DSU Article 13 empowers panels to form expert groups when necessary to obtain information and technical advice from any source. Paragraph 2 of the article includes the concept of "factual matters" as well as scientific and technical issues and scientific expert advice. There are opinions arguing that DSU Article 13 includes obtaining legal advice in addition to factual information and technical advice[70]. WTO judiciary made diverging rulings regarding the collection of legal opinions[71]. Considering these factors, it can be said that the GATT provisions regarding consultations (Articles XII, XVIII, XV) address the panels' authority to access to information and evidence in a way that is specific to the BOP situation.

There is no restriction in WTO law regarding the types of sources that panels will refer to for factual evidence. Within this scope, the source of information may be an expert person, expert institution, group of experts, other international organizations (including founding agreements, conventions within the organization and secondary rules established by organization's bodies), decisions of other international or national courts or national expert organizations, or an international treaty itself. It is even possible to refer to the negotiation histories of such agreements or conventions as a source of factual reference. Such an agreement need not be integrated into WTO law or even be binding on the members involved in the consultation or dispute. As a matter of fact, there are examples in WTO jurisprudence where an international agreement to which

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69 Isabelle Van Damme, *Treaty Interpretation by the WTO Appellate Body*, (Oxford: Oxford University Press, 2009), 166; Gabrielle Marceau, "WTO Dispute Settlement and Human Rights", *European Journal of International Law 13*, no. 4 (2002): 753.

70 Qureshi, *Interpreting WTO Agreements: Problems and Perspectives (Second Edition)*, 77-79; Debra P Steger, "Amicus Curiae: Participant or Friend? The WTo and NAFTA Experience" In *European Integration and International Coordination: Studies in Transnational Economic Law in Honour of Clauss-Dieter Ehlermann*, eds. A Von Bogdany & Petros C Mavroidis & Yves Mény, (New York: Kluwer Law International, 2002), 447.

71 For example; In *Japan - Agricultural Products II* case, the AB accepted the US' argument that the information that could be collected under DSU Article 13 includes information which could shed light on issues of law (WTO, *Japan: Measures Affecting Agricultural Products-Report of the Appellate Body* (22 February 1999) WT/DS76/AB/R [30]), likewise, in *US - Section 110(5) Copyright Act* case, the panel rejected the EC's argument that DSU Article 13 should be understood as restricting itself to the collection of factual information and technical advice (WTO, *United States: Section 110(5) of the U.S. Copyright Act-Report of the Panel* (15 June 2000) WT/DS160/R [6.6]); however, the panel of *US - Section 211 Appropriations Act* case applied to the World Intellectual Property Organization (WIPO)'s International Bureau to clarify some provisions of the 1967 Paris Convention (Stockholm Agreement) of the WIPO, yet, it called its request as gathering factual information, though this was a clear matter of law (WTO, *United States: Section 211 Omnibus Appropriations Act of 1998-Report of the Panel* (6 August 2001) WT/DS176/R [6.1], [6.2], [8.13].

WTO members are not parties and therefore non-binding for them is used to establish factual reality. For example; In *the US - Shrimp (Article 21.5-Malaysia)* dispute[72], complainant Malaysia referred to the "Inter-American Convention on the Protection and Conservation of Sea Turtles", to which it was not a party, for factual determinations on whether the US had provided equal cooperation opportunities to all WTO members and the state of play in international protection.

The legal basis of the role that IMF instruments would play in the WTO as acts of an international organization, both in terms of general legal rules and in terms of WTO agreements (GATT Articles XII, XVIII, XV; GATS Article XII), will not be reiterated here, as they have already been discussed in the previous lines. However, it is worth mentioning various GATT/WTO disputes in which IMF inputs were used as a factual reference source. In the GATT period, South Korea's restrictions on cattle imports based on the BOP exception under GATT Article XVIII were challenged by Australia, New Zealand and the US. In the panel report, completed and distributed in November 1989, it appears that the panel consulted with the IMF under GATT Article XV:2 for the purpose of collecting factual evidence about South Korea's reserves and BOP situation and the compliance of the measures at stake with the provisions of the IMF Articles[73]. The panel relied on the relevant GATT provisions regulating the obligation to consult the IMF and directly used the information and findings from the IMF. Since the WTO and DSU did not exist yet in those years, Article 13 discussions did not occur. In the WTO period, the authority given to the panels by DSU Article 13 to collect information and evidence has been the main reason for the debates on the status of the consultations with the IMF.

When it comes to the WTO period, in the case of *Argentina - Textiles and Apparel*, the WTO judiciary did not consult with the IMF on the grounds that the obligation of consultation is limited to the measures listed in Article XV:2. Yet, it, in *Dominican Republic - Import and Sale of Cigarettes* case, applied to the IMF under Article XV:2 to determine whether the measure complained of (the fee charged on the sale of foreign currency and calculated on the value of imported cigarettes) was a foreign exchange measure. The IMF stated that the fee was not a foreign exchange measure according to its 1960 Decision. Thus, the fee lacked a legitimate basis within the scope of the BOP exceptions. However, the panel did not directly use the IMF inputs, but used them as the basis for making its own determination and additionally, examined the criteria in the IMF's 1960 Decision and made its own analysis and obtained a result parallel to that of the IMF[74]. The

[72] WTO, *United States: Import Prohibition of Certain Shrimp and Shrimp Products (India, Malaysia, Pakistan, Thailand v. United States)*, WT/DS58, 1996.

[73] *Republic of Korea Restrictions on Imports of Beef* (1989) GATT L/6504-36S/202, L/6505 - 36S/234, L/6503 - 36S/268.

[74] WTO, *Dominican Republic: Report of the Panel*, [5.52], [5.53]

panel avoided a discussion on the binding nature of IMF inputs. Leaving aside the panel's formal officiousness in protecting its jurisdiction, it used the inputs from the IMF as a source of factual reference in assessing compliance with WTO rules.

In this case, another issue regarding the obligation to consult with the IMF has come to the fore. The Dominican Republic, which took the measure, claimed that the fee stipulated by the measure was in compliance with the IMF Articles as required by GATT Article XV:2, on the grounds that it was based on an exemption in the standby agreement with the IMF. First of all, there was no need for the panel to enter into an analysis on this issue after obtaining the IMF's opinion that the measure was not a foreign exchange measure and closing the issue. However, in practice, panels make additional interpretations in order to complete the analysis. Thus, the panel, continuing its analysis, did not find the fact that the Dominican Republic based its exception claim only on a press release was sufficient to prove the measure to be part of the stabilization program[75]. It follows that if it had been sufficiently demonstrated by the Dominican Republic that the measure was a necessity and part of the stabilization program, the panel would have deemed the measure to be in compliance with the provisions of the IMF Articles. However, according GATT Article XV:2, in the case of a foreign exchange measure, it is necessary to consult with the IMF regarding the compliance of the measure with the provisions of the IMF Articles.

While an application was made to the IMF for a determination on "foreign exchange" in the *Dominican Republic - Import and Sale of Cigarettes* case, there are also examples of disputes in which applications were made for assessments on "balance of payments". One example is the *India - Quantitative Restrictions* case, but the panel relied on the right to collect information and evidence from all sources (DSU Articles 13) instead of GATT Article XV:2, just as it did in the *Argentina - Textiles and Apparel* case. In this sense, this application to the IMF is not suitable for a discussion within the scope of formal consultations. However, it contains enlightening issues in terms of content. The panel consulted with the IMF regarding India's BOP situation and used the findings and determinations from the IMF in forming its decision. In its appeal, India claimed that the IMF inputs had been accepted without further questioning by the panel, therefore it had violated the "obligation to make an objective assessment of the facts" in DSU Article 11, which had amounted to delegation of authority to the IMF[76]. AB rejected the India's objection on the grounds that the panel had referred to the IMF for factual information on the BOP situation and had considered further evidence from the sources outside the IMF in addition to critically evaluating the inputs of the IMF[77]. Hence, the AB verified that IMF inputs were used for factual information purposes.

75 WTO, *Dominican Republic: Report of the Panel* [7.147]-[7.154].

76 WTO, *India: Report of the Appellate Body* [146].

77 WTO, *India: Report of the Appellate Body* [149]-[152].

CONCLUSIONS

International law attaches a special importance to the close connection between trade and finance within the international economic order and defines a special form of cooperation between the GATT/WTO and the IMF. In this context, the GATT/WTO has an obligation to consult with the IMF on certain issues. In GATT 1947 text (Articles XII and XVIII), contracting parties facing BOP problems are granted the right to impose trade restrictive measures under certain conditions, as an exception to the general prohibition of quantitative restrictions of GATT Article XI. The scope of BOP exceptions has come to include other multilateral trade agreements in the WTO period.

Member states desiring to benefit from BOP exceptions must consult with the BOP Committee to assess whether they meet the necessary conditions. The BOP Committee, while making its decision during this evaluation process, is obliged to consult with the IMF on the BOP situation and reserves and other related financial issues regarding the member country in question and on the compliance of the measure at stake with the IMF Articles / relevant special foreign exchange agreement (The third sentence of Madde XV:2). In addition, WTO members have a general obligation to consult with the IMF in cases where issues regarding monetary reserves, BOP and foreign exchange regulations come to the fore (The first and second sentences of Madde XV:2).

The consultation is regulated in a binding language in WTO texts. Moreover, as a corollary of that, the acceptance of the information, findings and determinations coming from the IMF is considered as an obligation. However, there have been controversial issues regarding the scope of this obligation and the status of IMF inputs in the WTO. One of those is whether the obligation to consult also includes panel processes. The WTO judiciary has had tendency to exclude itself from this obligation, but also refrained from making a clear judgment on the issue in a limited number of disputes. It is necessary to wait for new rulings in prospective disputes for the WTO judiciary's stance on the issue to become clear. The binding language of Article XV:2 and the comprehensiveness of its first two sentences, makes it possible to infer that the obligation to consult extends to all WTO bodies.

The distant attitude of the law-oriented WTO judiciary towards Article XV obligations is not at an appropriate level in determining the WTO - IMF relationship in the context of international economic governance. In other words, Article XV obligations should not be left to the interpretations of judicial bodies due to their own authority concerns, but should be clarified sufficiently at the rule-making or decision-making level. There appears to have occurred a disconnection during the Uruguay Negotiations regarding the scope of bindingness, which resulted from the fact that the negotiators largely focused on reciprocity in concessions,

overlooking an international institutional perspective[78]. Two methods that come to mind to close the gap in question are as follows: (i) the WTO General Council can act an authoritative interpretation based on the authority given in Article IX:2 of the WTO Agreement, or (ii) an explanatory text or a procedure for cooperation between bodies can be adopted by the WTO and the IMF.

The scope of the WTO's obligation to consult with the IMF is limited in terms of subject matter, which covers the issues related to monetary reserves, BOP or foreign exchange regulations and financial matters. Likewise, there is a limited scope in terms of the type of measures. The relevant provisions of the GATT included a limited list (measures regarding foreign exchange, monetary reserves and BOP). The distinction between trade measures and foreign exchange measures (GATT Article XV:9) matters since the obligation to consult with the IMF depends on the measure being a foreign exchange measure or at least having a financial aspect. However, distinguishing between trade and foreign exchange measures has always had difficulties.

The list of measures has expanded over time with the development of new concepts that are not included in the IMF and GATT texts. When the question on whether there was an obligation to consult with the IMF for an "adjustment measure" within the scope of an IMF-supported stabilization programme was raised before WTO judiciary (*Argentina - Textiles and Apparel* case), the panel considered the measures enumerated in Article XV:2 (the measures related to foreign exchange, monetary reserves and BOP) as a limited list requiring consultations with the IMF and did not find it necessary to apply to the IMF on the grounds that the adjustment measures under review did not concern one of these issues. The AB supported panel's ruling. Besides, the IMF also confirmed that there was no matter that required consultation as per the list in Article XV:2 but stated that panel should have consulted in order to ensure wider cooperation and better understand the measure, arguments and the context of the case. In the years when the GATT 1947 text was written, tools such as adjustment programs were not yet included in the IMF's toolbox, so they were not provided in the GATT 1947 text. In taking such developing new concepts and situations into consideration, it is an appropriate way to employ the principle of dynamic interpretation, which is one of the established principles of customary international law.

The functional status of IMF inputs obtained during the consultations is to provide factual reality to WTO decision-making processes. This corresponds to the concept of evidence in dispute settlement processes. The legal nature of the IMF's determinations regarding the compliance of the measures under review with the IMF Articles (or a special foreign exchange agreement, if any) does not change the nature of the functional status of the input for the WTO.

78 Siegel, "Legal Aspects of IMF/WTO Relationship: The IMF's Articles of Agreement and the WTO Agreements", 878.

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