

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

Draft Charter

The Delegation of the United States of America submit the following proposals for amendment of Articles 26, 28, and 29 of the Draft Charter:

ARTICLE 26 : Restrictions to Safeguard the Balance of
Payments

1. Some [The] Members may need to use import restrictions temporarily as a means of safeguarding their external financial positions and as a step towards the restoration of equilibrium in their balances of payments on a sound and lasting basis, particularly in view of their increased demand for imports needed to carry out their domestic employment, reconstruction, development or social policies. Accordingly, notwithstanding the provisions of paragraph 1 of Article 25, any Member may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard its balance of payments and monetary reserves.

COMMENT:

The first two changes are intended to remove the implication in the New York draft that import restrictions for balance of payments reasons are expected to be used generally and indefinitely. The other changes are designed to clarify the intention of the paragraph.

3. (a) Any Member which is not applying restrictions under paragraphs 1 and 2 of this Article, but which is considering the need for their institution under such paragraphs, shall, before instituting such restrictions (or, in circumstances

in which prior consultation is impracticable, immediately following upon the institution of such restrictions) consult with the Organization as to the nature of its balance-of-payments difficulties, the various corrective measures which may be available, and the possible effects of such measures on the economies of other Members. The Organization shall invite the International Monetary Fund to participate in the consultations. No Member shall be required during such discussions to indicate in advance the choice of timing of any particular measures which it may ultimately determine to adopt.

COMMENT:

This addition will eliminate the possible implication that quantitative restrictions under Article 25, paragraph 2, require consultation under this sub-paragraph.

- (d) Any Member which considers that any other Member is applying import restrictions under paragraphs 1 and 2 of this Article in a manner inconsistent with the provisions of this Article [those paragraphs] ^{1/} or of Articles 27 or [and] 28, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organization.
- [The Member applying the restrictions shall then participate in discussions of the reasons for its action. The] If the Organization [, if it] is satisfied that there is a prima facie case that the complaining Member's interests are adversely affected, it shall afford the Member applying the restrictions full opportunity to justify its action, and shall consult [may after consultation] with the International Monetary Fund on any aspect of the matter falling within the competence of the Fund [, and, if it]. The Organization [after submitting] may submit observations to the parties

with the aim of achieving a satisfactory settlement of the matter in question. If no such settlement is reached, the Organization shall ^{2/} recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the provisions of [paragraphs 1 and 2 of] this Article or of Article 27 or 28 or in a manner which unnecessarily damages the interests of another Member. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Member or Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

COMMENT :

^{1/} This sub-paragraph should not be limited to non-compliance with paragraphs 1 and 2 of this Article. The procedure should be equally applicable to, and frequently will involve of necessity, questions of non-compliance with other paragraphs, such as 3, 4 and 7.

^{2/} The substitution of the word "shall" for "may" is to avoid the implication that the Organization would be free to condone obvious violations of the provisions of the Article.

The other changes in this sub-paragraph are drafting suggestions.

Article 28

Exceptions to the Rule of Non-Discrimination

1(b) prohibitions or restrictions in accordance with
sub-paragraph ~~s~~ 2(a) (i) ~~or 2(d)~~ of Article 25.

Comment:

The reference to sub-paragraph 2(d) of Article 25
has been deleted because of the proposal of the
U.S. Delegation made in a separate document to
delete that sub-paragraph.

1(c) ~~Delete.~~ See suggested new paragraph 7 of Article 29.]

1(d)(ii) assist in the period until 31 December 1951, by
measures not involving a substantial departure from the
provisions of Article 27, ~~a~~ another country whose economy
has been disrupted by war:

Comment:

This change is designed to make clear the intention
to cover the case of one Member helping another,
but not the case of one Member helping itself.

3. When three-quarters of the Members of the Organization
have accepted the obligations of Sections 2, 3 and 4 of
Article VIII of the Articles of Agreement of the International
Monetary Fund, but in any event before 31 December 1951, the
Organization shall review the operation of this Article, in
consultation with the International Monetary Fund, with a view
to the earliest possible elimination of any discrimination
~~under paragraphs 1(e)(i) and (ii) of this Article~~,
which restricts the expansion of world trade].

Comment:

The last clause has been omitted to eliminate the
possible interpretation that it is the wisdom rather
than the continued necessity for discriminatory
import restrictions which is to be reviewed.

Article 29: Exchange Arrangements

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the [competence] jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the [competence] jurisdiction of the Organization. In all cases in which the Organization is called upon to consider or deal with balance-of-payments problems the Organization shall consult the International Monetary Fund fully regarding the problem. After such consultation the Organization shall accept the determination of the International Monetary Fund as to all facts relating to exchange controls or restrictions, as to statistics regarding general international balance-of-payments or the balance of payments of any Member, and as to the analysis of the balance-of-payments position.

Comment:

The first two amendments are designed to avoid ambiguity, since the word "competence" is used with a different meaning in paragraph 3 (d) of Article 26 and in paragraph 2 of Article 28. The two new sentences proposed for addition to the paragraph are designed to clarify the function of the Fund when consulted on balance of payments questions, and to relieve the Organization of the necessity of building up a separate staff of technical experts who would duplicate the work of the Fund experts. Acceptance of this amendment would make it possible to delete many references to consultation with the Fund, particularly in Article 26.

7. Nothing in this Section is intended to preclude a Member from requiring that its exporters accept only its own currency or the currencies of any one or more members of

the International Monetary Fund, as it may specify in
payment for exports.

Comment:

This provision constitutes, in substance, paragraph 1(c) of Article 28 of the New York draft. It is misplaced in Article 28, since it does not constitute an exception to the rule of non-discrimination on quotas. As rephrased here, it is clearly an exchange matter rather than a provision involving quantitative restrictions, and would therefore belong most appropriately in Article 29.