

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE E (ARTICLES 20 AND 22)

REPORT OF WORKING PARTY NO. 1 ON ARTICLE 20 (2) (c)

Working Party No. 1 consisting of the delegates of Colombia, Ireland, Netherlands, Sweden, the United Kingdom and the United States was set up at the third meeting of Sub-Committee E to consider the amendments of Sweden (Item 21 of the Annotated Agenda - E/CONF.2/C.3/7), Ireland (Item 22) and Egypt (Item 15). At the seventh meeting of the Sub-Committee, this Working Party was enlarged to include the delegates of Mexico and Peru, and charged with considering further the interpretation of the term "restrict" in Article 20 (2) (c) and the amendments of Peru (E/CONF.2/C.3/E/W.5) and of Ireland (E/CONF.2/C.3/E/W.6). The amendment of Norway (Item 19), the United Kingdom amendment (E/CONF.2/C.3/E/W.10) and the Geneva draft note on "special factors" were later referred to this Working Party by the Chairman of Sub-Committee E, as were any amendments arising out of the discussions in the Working Party. The delegates of Canada and Denmark have attended the meetings throughout and other delegations whose amendments have been under discussion have presented their views. The Working Party reports as follows:

I. General

The Working Party agreed that Article 20 (2) (c) was not intended to provide a means of protecting domestic producers against foreign competition but simply to permit, in appropriate cases, the enforcement of domestic governmental measures necessitated by the special problems relating to the production and marketing of agricultural and fisheries products.

II. Interpretation of the term "restrict".

The Working Party agreed that in interpreting the term "restrict" for the purposes of Article 20 (2) (c) the essential point was that the measures of domestic restriction must effectively keep domestic output below the level which it would have attained in the absence of restrictions.

III. Amendments Designed to Narrow the Scope of Article 20 (2) (c)

The Working Party discussed fully the proposals of Egypt and Peru seeking to provide that Article 20 (2) (c) should apply only:

- (a) where the restrictions on domestic output were temporary (Egypt);
- /(b) to permit

- (b) to permit only temporary use of import restrictions (Peru);
- (c) where there was a surplus of production (Egypt, supported by Peru);
- or
- (d) where there was no subsidy to domestic production (Peru).

As regards (a) and (b) it was noted that the term "temporary" was difficult to define, that Working Party No. 3 on export restrictions had recommended the substitution of the words "for the period necessary" for the word "temporary" in Article 20 (2) (a), and that the terms of Article 20 (2) (c), particularly with the additional provisions recommended by Working Party No. 6, would ensure that import restrictions could be applied only for as long as they were necessary to the enforcement of restrictions on domestic output. It was agreed that Governments would certainly not wish to restrict domestic output of agricultural and fisheries products for any longer period than was really necessary. The delegates of Egypt and Peru withdrew these proposals, on the understanding that they would be free to reintroduce them if the additional provisions recommended by Working Party No. 6 were not adopted by the Conference.

As regards (c), the Working Party agreed that no Government would wish to restrict domestic output except when obliged to do so by the existence of a surplus or by a persistent tendency towards the production of a surplus; however, to write (c) (or, indeed, (a) or (b)) into the text of the Charter would in practice have the effect of giving the Organization the power to determine whether and when Members could or could not institute or enforce particular restrictions on domestic agricultural production, a condition which Governments could not reasonably be expected to accept.

As regards (d), the Working Party agreed that it was not the case that subsidies were necessarily inconsistent with restrictions of production and that in some cases they might be necessary features of a governmental programme for restricting production. It was recognized, on the other hand, that there might be cases in which restrictions on domestic production not effectively enforced and that this, particularly in conjunction with the application of subsidies, might lead to misuse of the provisions of Article 20 (2) (c). The Working Party agreed that Members whose interests were seriously prejudiced by the operation of a domestic subsidy should normally have recourse to the procedure of Article 25 and that this procedure would be open to any member who considered that restrictions on domestic agricultural production applied for the purposes of Article 20 (2) (c) were being rendered ineffective by the operation of a domestic subsidy. The essential point was that the restrictions on domestic production should be effectively enforced and the Working Party recognized that unless this condition were fulfilled, restrictions on imports
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would not be warranted.

It was agreed (except by the delegate of Peru who reserved his position as regards the question of subsidies) that points (c) and (d) might adequately be met by the insertion of "effectively" after "operate" in the fourth line of Article 20 (2) (c) and by the provision of other suitable safeguards for the interests of exporting countries (see under IV below).

IV. Safeguards for Exporting Countries

The Working Party gave full consideration to the question of safeguards to prevent prejudice to the interests of exporting countries by import restrictions imposed in consequence of restrictions on domestic output under Article 20 (2) (c). It was agreed that the possibility that the provisions of the Article might be misused by the imposition of restrictions on domestic output which were not effectively enforced should be dealt with by the amendments suggested in the last paragraph of section III.

The Working Party further noted that the provisions of Article 22, and in particular the consultation provisions of Article 22 (4), applied to import restrictions imposed under Article 20 (2) (c); further, that it would be open to a Member at any time to make representations under Article 41 to a Member applying import restrictions under Article 20 (2) (c), or to raise under Articles 89 and 90 the question whether the Governmental measures restricting domestic output were such as to warrant the application of import restrictions under Article 20 (2) (c).

It was pointed out that the sudden imposition of import restrictions under Article 20 (2) (c) might have serious effects on the interests of exporting countries, and that to avoid this there should be provisions requiring Members intending to introduce such import restrictions to give as much advance notice as possible to exporting countries in order to afford adequate opportunity for consultation before the import restrictions are put into effect. It was suggested that this point might be met by the inclusion of the provisions as to prior notice and consultations set out in VII below.

It was agreed that provision should be made for the observance of secrecy with regard to prior notice of, and consultation concerning, the proposed introduction of restrictions if the Member proposing to introduce such restrictions should so request.

It was pointed out that it was possible that import restrictions might in certain circumstances operate so as to give undue advantage to particular exporting countries. For example, global quotas not allocated among supplying countries might sometimes operate in a manner unduly favourable to those countries best able for any reason to take prompt advantage of the global quota at the opening of the quota period; and it was agreed that Members, in
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administering import restrictions, should pay due regard to the need for avoiding such a result. It was also agreed that, in the case of perishable commodities, due regard should be had for the special problems affecting the trade in these commodities.

V. Amendments Designed to Widen the Scope of Article 20 (2) (c)

The Working Party discussed the amendment of Ireland (Item 22) providing for the use of import restrictions to implement governmental policy to maintain the incomes of producers, and also an amendment put forward in the Working Party by the delegate of Colombia, providing for the use of import restrictions to stabilize agricultural prices. A majority of the Working Party felt that these amendments provided for the use of import restrictions on a much broader basis than that provided in the case of restrictions under (1) of Article 20 (2) (c), and if generally applied would widen the scope of the Article in a way which would seriously endanger the interests of agricultural exporting countries, and that the particular difficulties of Ireland should be met by other measures. The delegate of Colombia withdrew his amendment in view of the lack of support for it, but the delegate of Ireland felt unable to withdraw his amendment.

A further amendment was proposed to the Working Party by the delegate of Ireland, providing for the use of import restrictions to facilitate the disposal of seasonal and unavoidable surpluses of domestic production. In discussion, this amendment did not receive support, and the delegate of Ireland withdrew it.

The Working Party discussed the amendment of Sweden providing for the use of import restrictions to mitigate seasonal and short term fluctuations in the supply of agricultural products. After hearing a statement by the delegate of Sweden as to his Government's policy in regard to livestock production, the Working Party agreed that a number of measures that he had described were certainly capable of being used for restricting domestic production, and, to the extent that they were so used, would be covered by the provisions of Article 20 (2) (c) (1). On this understanding the delegate of Sweden withdrew his amendment.

VI. Other Points

Norwegian Amendment

After hearing the explanation of the Norwegian delegate, the Working Party decided that the proposal to substitute the word "partly" for "mainly" in Article 20 (2) (c) (iii) was unnecessary. It was agreed that, under the existing text, in a case for example in which a Member wished to restrict the quantities permitted to be produced of any animal product the production of which was dependent wholly or mainly on two or more imported kinds of feeding
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stuffs considered together but not necessarily on either kind considered separately, it would be open to that Member to restrict the production of animal products, provided that domestic production of the imported kinds of feeding-stuffs were relatively negligible, by treating the imported kinds of feeding-stuffs as a single commodity and applying import restrictions thereto.

It was further agreed that if the various imported feeding-stuffs were in fact treated as a single commodity, import restrictions thereon should be applied globally on the total combined imports without allocating shares to the individual feeding-stuffs. It was felt that, in cases where this procedure would not be practicable, the import restriction should take the form of an equal proportionate reduction in the amount permitted to be imported of each of the several feeding-stuffs.

The delegate for Norway accordingly withdrew his amendment.

United Kingdom Amendments

(a) After discussion the amendment in document E/CONF.2/C.3/E/W.10 was withdrawn by the delegate of the United Kingdom.

(b) The Working Party accepted a further United Kingdom suggestion that in order to avoid ambiguity the words "agricultural or fisheries" should be inserted between "domestic" and "product" at the end of sub-paragraph 2 (c) (i).

Geneva Note on "special factors"

The Working Party took note of the new note to Article 22 on "special factors" recommended by Working Party No. 8, and agreed that this, from the point of view of Article 20 (2) (c) of the Geneva text, was desirable in that it made clear that, in cases where separate import quotas were allotted to the various foreign suppliers, a country whose productive efficiency or ability to export had increased relatively to other foreign suppliers since the representative period on which import quotas were based should receive a relatively larger import quota. The Working Party recommends that the note to Article 20 (2) (c) of the Geneva text on "special factors" should be retained as an interpretative note to sub-paragraph 3 (d), subject to the changes indicated below to bring it into line with the proposed new note to Article 22. It was brought to the notice of the Working Party that the delegation of Cuba may wish to raise the question of the footnotes relating to "special factors" in Articles 20 and 22 when these Articles are again discussed by Sub-Committee E.

VII. Proposed Revised Text of Article 20 (2) (c)

(NOTE: The following revised text of the existing Article 20 (2) (c) to which has been added a new paragraph 3 contains the alterations suggested in the earlier paragraphs of this report and takes into account the United
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Kingdom drafting amendment (Item 16), which was accepted by Sub-Committee E; it also incorporates the changes proposed by Working Party No. 6 in documents E/CONF.2/C.3/E/W.16 (paragraph 3 (a) below) and in E/CONF.2/C.3/E/W.16/Add.1 (interpretative note on "in any form"). The drafting of the former has in consequence been slightly altered with the concurrency of Working Party No. 6).

ARTICLE 20

2. The provisions of paragraph 1 of this Article shall not extend to the following:

- (a) (Still under consideration by Sub-Committee E);
- (b) As in Geneva text;
- (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate effectively:

- (i) to restrict the quantities of the like domestic product permitted to be marketed or produced of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic agricultural or fisheries product for which the imported product can be directly substituted; or

- (ii) As in Geneva text;

- (iii) As in Geneva text.

3. With regard to import restrictions applied under the provisions of sub-paragraph 2 (c):

- (a) such restrictions shall be applied only so long as the governmental measures referred to in sub-paragraph 2 (c) are in force, and when applied to the import of products, the supply of which is subject to seasonal variation, shall not be applied in such a way as to prevent their import in quantities sufficient to satisfy demand for current consumption purposes during those periods of the year when like domestic products, or domestic products for which the imported product can be directly substituted, are not available.

- (b) Any Member intending to introduce restrictions on the importation of any product shall in order to avoid unnecessary damage to the interests of exporting countries give notice in writing, as far in advance as practicable, to the Organization and to Members having a substantial interest in supplying that product, in order to afford such Members adequate opportunity for consultation in accordance with paragraphs 2 (d) and 4 of Article 22, before the restrictions enter into force. At the request of the importing Member concerned

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the notification and any information disclosed during these consultations shall be kept strictly confidential.

(c) Any Member applying such restrictions [on the importation of any product pursuant to this sub-paragraph] shall give public notice of the total quantity or value of the product permitted to be imported during a specific future period and of any change in such quantity or value.

(d) Any restrictions applied under sub-paragraph 2 (c) (i) shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the Member shall pay due regard to the proportion prevailing during a previous representative period, and to any special factors which may have affected or may be affecting the trade in the product concerned.

(Paragraph 3 of the Geneva Text of Article 20 would then become paragraph 4).

Interpretative Note

[The term "in any form" in this paragraph covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product, and if freely imported would tend to make the restriction on the fresh product ineffective.]

The term "agricultural or fisheries product, imported in any form" means such product in the form in which it is originally sold by its producer and such processed forms of the product the importation of which, without restrictions, would make ineffective the restrictions on the importation of the product in its original form.

Interpretative Note

The provisions of Article 20 (3) (b) with regard to prior consultation would not prevent a Member which had given other Members a reasonable period of time for such consultation from introducing the restrictions at the date intended. It is recognized that, in the case of consultation with regard to import restrictions applied under sub-paragraph 2 (c) (ii), the period of advance notice provided would in some cases necessarily be relatively short.

Interpretative Note

The term "special factors" in sub-paragraph 3 (d) includes changes in relative productive efficiency as between domestic and foreign producers, [or as between different foreign producers] but not changes artificially brought about by means not permitted under the Charter, which may have occurred since the representative period.

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VIII. The Working Party recommends that the substance of sections I, II, III and IV be incorporated in the Report of Sub-Committee E to Committee III, together with the last paragraph of section V dealing with the amendment of Sweden and that part of section VI which deals with the amendment of Norway.

IX. The representative of Mexico wished to record a pro forma reservation regarding the exceptions in Article 20 (2) (c) to the general prohibition of quantitative restrictions under Article 20 (1). He stated that he interpreted that import restrictions under Article 20 (2) (c) were allowed only when they did not affect products whose treatment was otherwise specified in prior international commitments.

The representative of Mexico also stated that he wished to record a reservation by his delegation regarding Article 20 (2) (c), in view of the divergent position taken by certain delegations with respect to the procedure for establishing quantitative restrictions under Article 13 and under Article 20 (2) (c).

The delegates of Peru and Colombia wished to state that the provisions of Article 20 (2) (c) gave a definite advantage to certain countries because they allowed them to apply import restrictions to defend their agriculture against some contingencies. Their delegations considered that other countries, particularly underdeveloped ones, should be allowed to defend their economies and foster their development by similar or other measures, by provisions in another or other Articles of the Charter. Consequently, they reserved the position of their countries regarding Article 20, pending the final text of Article 13.

The delegate of Ireland agreed with the delegate of Colombia that Article 20 (2) (c) seemed to favour those countries which, because of the manner in which their agricultural industries are organized and officially controlled, can readily institute schemes of regulation qualifying them for the benefits of that sub-paragraph. Nonetheless, he did not object to the retention of this sub-paragraph. He maintained, however, that the provisions of the Article should be extended so as to enable other countries to use import restrictions at least to meet situations arising out of unavoidable seasonal fluctuations in supply, and also to allow for the maintenance of stable incomes in agriculture. He was compelled to reserve his position on these points.