

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE E (ARTICLES 20 AND 22)

DRAFT REPORT OF SUB-COMMITTEE E TO COMMITTEE III

Chairman: Mr. J. E. HOLLOWAY (South Africa)

PART I

1. Sub-Committee E was appointed on 30 December 1947 to examine and submit recommendations to Committee III on all proposed amendments to Articles 20 and 22 and was given authority to consult, if necessary, with Sub-Committee C of Committee II on Articles 13 and 14.
2. The Sub-Committee was composed of the delegations of Ceylon, Chile, China, Colombia, Egypt, France, Ireland, Mexico, Netherlands, New Zealand, Peru, South Africa, Sweden, the United Kingdom and the United States.
3. The Sub-Committee at its first meeting on 5 January 1948, unanimously elect Mr. J. E. Holloway (South Africa) as Chairman.
4. The Sub-Committee held ten meetings and established nine Working Parties to consider particular proposals in detail. All the amendments listed in the Annotated Agenda (reference E/CONF.2/C.3/7) were fully studied, together with various proposals arising out of those amendments.
5. The Sub-Committee and the Working Parties enjoyed the benefit of consultation and co-operation with the delegations of Argentina, Australia, Canada, Cuba, Czechoslovakia, Denmark, Greece, India, Lebanon, Norway, Syria and Turkey.
6. On behalf of the Sub-Committee the Chairman has the honour to present the Report of Sub-Committee E to Committee III as contained in this document with the recommendation that Committee III approve the revised texts of Articles 20 and 22 as set forth in Part III of this Report together with the interpretative notes thereto.

/PART II

PART II

Part II of this Report contains the conclusions reached by the Sub-Committee in respect of Articles 20 and 22. Proposed amendments to and reservations on the Geneva text are set forth in documents E/CONF.2/C.3/7 and E/CONF.2/C.3/7/Corr.3 and Corr.5.

A revised draft of Articles 20 and 22 is given in Part III, with proposed deletions in square brackets and proposed additions underlined.

ARTICLE 20 - GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS

(All References are to the Annotated Agenda

Document E/CONF.2/C.3/7 unless otherwise Specified)

General

1. The Sub-Committee cannot recommend the deletion of the Article proposed by the delegation of Ceylon (Item 26).

The representative of Ceylon reserved his position on the Article, pending a final settlement on the provisions of Article 13.

Paragraph 1

2. No amendments were proposed to this paragraph.

Paragraph 2 - General

Amendment of Chile (Item 1)

Argentina (Item 2)

China and Lebanon (Item 3)

Cuba (Item 4)

Cuba (Item 5)

3. The Sub-Committee discussed fully the amendments of Chile and Argentina. A Working Party was set up and agreed on a settlement which was provisionally accepted by the representative of Chile. This settlement involves an amendment to and an interpretation of Article 21. [The representative of Chile, ^{and Arg} ~~however~~ reserved his position on this settlement until the final texts of Articles 13 and 21 were known.

4. The representative of China maintained his reservation on paragraph 2 of Article 20 until final agreement had been reached on Article 13. The representative of Lebanon (who was not a member of the Sub-Committee) withdrew his reservation, considering that the problem of the use of quantitative restrictions by under-developed countries should be solved under Article 13.

5. There was no support for the amendments of Cuba (Items 4 and 5). The representative of Cuba (who was not a member of the Sub-Committee) reserved his position with regard to the latter amendment.

Paragraph 2 (a)

Amendment of Australia (Item 6)

Greece (Item 7)

/China (Item 8)

China (Item 8)
Sweden (Item 9)
Mexico (Item 10)

6. The following text is recommended to meet the amendment put forward by the delegation of Australia:

"(a) export prohibitions or restrictions temporarily applied for the period necessary to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member country."

7. The Sub-Committee considered the request of the delegation of Australia that the reference to the term "critical" in the minutes of the proceedings of Commission A in the Second Session of the Preparatory Committee (document E/PC/T/A/PV/40 (1) pages 4, 6, 8 and 9) be concurred in by Committee III and included in its minutes. The Sub-Committee unanimously concurs in the conclusions of Commission A as set out in Geneva document and recommends to the Committee that the Australian request be met.

8. In connection with the amendment submitted by the delegation of Greece, the Sub-Committee felt that the position could best be met by an interpretative footnote. It is recommended that this note should take the following form:

"In the case of products which are basic to diet in the exporting country and which are subject to alternate annual shortages and surpluses, the provisions of this sub-paragraph do not preclude such export prohibitions or restrictions as are necessary to maintain from year to year domestic stocks sufficient to avoid critical shortages."

9. The delegation of China withdrew this amendment, while reserving its position should certain other provisions in the Charter be altered.

10. The Sub-Committee was satisfied that the terms of Article 20, paragraph 2 (a) are adequate to allow a country to impose temporary export restrictions to meet a considerable rise in domestic prices of foodstuffs due to a rise in prices in other countries. In view of this consideration the amendment of Sweden was withdrawn.

11. The amendment of Mexico was withdrawn.

Paragraph 2 (b)

12. No amendments were proposed to this sub-paragraph.

Paragraph 2 (c)

Amendment of Peru (Item 11)

Peru (E/CONF.2/C.3/E/W.5)

Mexico (Item 12)

Norway (Item 13)

Uruguay (Item 14)

/Egypt (

Egypt (Item 15)
United Kingdom (Item 16)
Sweden (Item 17)
Ireland (Item 18)
Ireland (E/CONF.2/C.3/E/W.6)
Norway (Item 19)
Uruguay (Item 20)
Sweden (Item 21)
Ireland (Item 22)
Chile (Item 23)
United Kingdom (E/CONF.2/C.3/E/W.10)
Geneva Draft Note (Item 24)
Geneva Draft Note (Item 24)
Geneva Draft Note (Item 25)

13. The Sub-Committee 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.

Interpretation of the Term "restrict"

14. The Sub-Committee 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.

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

15. The Sub-Committee cannot recommend the adoption of the amendments proposed by Peru (Item 11), Mexico (Item 12) and Norway (Item 13).

16. The Sub-Committee 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 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, and that the terms of Article 20 (2) (c), particularly with the additional provision of the proposed new sub-paragraph 3 (a), 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

output of agricultural and fisheries products for any longer period than was really necessary. The delegates of Egypt and Peru withdrew these proposals.

As regards (c), the Sub-Committee 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 Sub-Committee 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 were 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 Sub-Committee 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 which 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 Sub-Committee recognized that unless this condition were fulfilled, restrictions on imports would not be warranted.

It was agreed (except by the representative 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.

Safeguards for Exporting Countries

17. The Sub-Committee gave full consideration to the question of safeguards to prevent prejudice to the interest 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 section of paragraph 15 above.

/18. The

18. The Sub-Committee 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).

19. It was pointed out that the sudden imposition of import restrictions under Article 20 (2) (c) might have serious effects on the interest 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 were 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 the proposed new sub-paragraph 3 (b) (see Part III).

20. 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.

21. 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 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.

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

22. A majority of the Sub-Committee felt that the amendment of Ireland (Item 22), and an amendment of Colombia providing for the use of import restrictions to stabilize agricultural prices, provided for the use of import restrictions on a much broader basis than that provided in the case of restrictions under (i) of Article 20 (2) (c), and if generally applied would widen the scope of the Article in a way which would seriously endanger the interest of agricultural exporting countries, and that the particular difficulties of Ireland should be met by other measures. Accordingly the

/Sub-Committee

Sub-Committee is unable to recommend the adoption of these amendments.

23. The Sub-Committee discussed the amendment of Sweden (Item 21) 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 representative of Sweden as to his Government's policy in regard to livestock production, the Sub-Committee 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) (i). On this understanding the representative of Sweden withdrew his amendment.

24. The Sub-Committee cannot recommend the adoption of the amendments of Uruguay (Items 14 and 20) and Ireland (Item 18). The amendment of Ireland (E/CONF.2/C.3/E/W.6) was withdrawn.

Other Amendments

25. The Sub-Committee decided that the proposal by the delegation of Norway 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 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 representative of Norway accordingly withdrew his amendment (Item 19).

26. The Sub-Committee agreed that the provisions of Article 20 (2) (c) (ii) would cover arrangements under which the government concerned made temporary surpluses of grain available as animal feeding-stuffs to small holders and similar categories with a low standard of living, free of charge or at prices below the current market level. In the light of this the representative of Sweden withdrew the amendment (Item 17).

27. The amendment of Mexico (Item 12) did not find the support of the Sub-Committee.

/28. The

28. The amendment of the United Kingdom (E/CONF.2/C.3/E/W.10) was withdrawn. The Sub-Committee 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). The drafting amendment of the United Kingdom (Item 16) was accepted.

29. The Sub-Committee agreed that a new sub-paragraph (3 (a) in the revised draft of the text below) should be inserted to achieve the objectives of the amendment of Chile (Item 23).

Paragraph 3

30. No amendments were proposed to this paragraph.

Geneva Draft Notes

31. With regard to the footnote in the Geneva text on the term "in any form" the Sub-Committee accepted as valid the criticism put forward by the representative of the United States that the introduction of the term "perishable" which is inapplicable to many types of agricultural products had unduly narrowed the scope of sub-paragraph 2 (c). It considered, therefore, that some clarification of the text was required and accordingly recommends to the Sub-Committee the wording as set forth in Part III of this Report.

32. The Sub-Committee however wishes to make clear that the omission of the phrase "when in an early stage of processing and still perishable" is dictated solely by the need to permit greater flexibility in taking into account the differing circumstances that may relate to the trade in different types of agricultural products, having in view only the necessity of not making ineffective the restriction on the importation of the product in its original form and is in no way intended to widen the field within which quantitative restrictions under Article 20, paragraph 2 (c) may be applied. In particular, it should not be construed as permitting the use of quantitative restrictions as a method of protecting the industrial processing of agricultural or fishery products.

33. The word "utilization" refers to the ultimate use of the products and is not used in a technical sense. For example, wheat and flour are so closely related as regards utilization that flour is regarded as a processed form of wheat for the purpose of Article 20, paragraph 2 (c).

34. The Sub-Committee agreed on the proposal of the representative of Canada (who was not a member of the Sub-Committee) that a new interpretative note to the text should be inserted which would make clear that the proposed new paragraph 3 was not designed to extend the freedom to use quantitative restrictions under Article 20.

35. With regard to the footnote on "special factors" the Sub-Committee agreed that it was desirable to make clear that, in cases where separate import

/quotas

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 Sub-Committee 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) in the form set out in Part III of this Report.

36. The Sub-Committee, after consideration of the interpretative notes on "special factors" to Articles 20 and 22 of the Geneva text, agreed that, as stated in those notes, changes artificially brought about since the representative period (assuming that period to have preceded the coming into force of the Charter) by means not permissible under the provisions of the Charter were not to be regarded as "special factors" for the purposes of Article 20 (2) (c) and Article 22. The Sub-Committee agreed, however, that it was unnecessary to state this specifically in the text of the Articles or in the interpretative notes.

37. The Sub-Committee agreed that the use of the words "inter alia" in this footnote and in the footnote to Article 22 on "special factors" (see page 15) should be brought to the notice of the Central Drafting Committee in order that the footnotes throughout the Charter might be standardized as to their form.

Other Points

38. At the request of the representative of Mexico the Sub-Committee agreed to have it recorded that in its view the freedom given to a Member to apply restrictions in terms of Article 20 (2) (c) did not free such Member from a prior obligation to any individual Member.

39. The representatives of Colombia, Mexico, and Peru reserved their positions on Article 20 until final settlement had been reached on the procedure for establishing quantitative restrictions under Article 13.

40. The representative of Ireland maintained that the provisions of Article 20 should be extended so as to enable 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 accordingly reserved his position on these points.

ARTICLE 22 - NON-DISCRIMINATORY ADMINISTRATION OF QUANTITATIVE RESTRICTIONS

1. The amendment of the delegation of Argentina (Item 61) to delete paragraphs 2, 3, 4 and 5 found no support in the Sub-Committee.

2. The amendments of Uruguay (Item 51) and Mexico (Item 58) were withdrawn since the Sub-Committee considered that their objectives were covered by the existing text of the Article; the amendments of Mexico (Item 52) and

/Turkey

Turkey (Item 54) were withdrawn in view of the revision of the interpretative note on "special factors" (see paragraph 5 below).

3. The amendment of Syria and Lebanon (Item 60) was referred to Sub-Committee F with the concurrence of those delegations and of Sub-Committee F.

4. The Sub-Committee agreed to delete the footnote to sub-paragraph 2 (d) of the Geneva text.

5. The Sub-Committee agreed that the interpretative note on "special factors" should be retained as a note but should be made more explicit both by the deletion of the cross-reference to the note to Article 20 which appears in the Geneva text and by the specific mention of certain additional factors which should be taken into account in the allocation of quotas. The Sub-Committee accordingly recommends the wording shown in Part III (see also paragraph 36 under Article 20).

6. The Sub-Committee agreed that the objectives of the amendments of India (Items 55 and 57) could best be met by the insertion of a new interpretative note to the text, as shown below in Part III.

7. The Sub-Committee considered that some provision should be made in the Charter for releasing a Member from its obligation to give public notice under sub-paragraphs 3 (b) and 3 (c) in the case of a Member trading with a non-Member or non-Members. Accordingly the Sub-Committee recommends that a new sub-paragraph 3 (d) be inserted in the text (see Part III). The Sub-Committee expressed the view that, to enable prompt consideration of applications under sub-paragraph 3 (d) it would be desirable for the Organization to delegate its functions in respect of this sub-paragraph to the Executive Board; and that, provided an application under this sub-paragraph was made sufficiently early and accompanied by sufficiently full information to enable adequate consideration by the Executive Board before the commencement of the quota period the Executive Board should temporarily release the applicant Member from the requirement to give public notice for the period necessary for the Executive Board to make a decision on the application.

/PART III

PART III

ARTICLE 20

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country.

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

(a) export prohibitions or restrictions temporarily applied for the period necessary to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member country;

(b) import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade; if, in the opinion of the Organization, the standards or regulations adopted by a Member under this sub-paragraph have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards or regulations; Provided that it shall not request the revision of standards internationally agreed under paragraph 7 of Article 38;

(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) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported products can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

3. With regard to import restrictions applied under the provisions of

/sub-paragraph 2 (c):

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, domestic supplies of which are available during only a part of the year, 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 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 specified future period and of any change in such quantity or value.

(d) [Moreover,] 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.

4. Throughout this Section the terms "import restrictions" or "export restrictions" include restrictions made effective through State-trading operations.

Interpretative Note to Sub-paragraph 2 (a)

In the case of products which are basic to diet in the exporting country and which are subject to alternate annual shortages and surpluses, the provisions of this sub-paragraph do not preclude such export prohibitions or restrictions as are necessary to maintain from year to year domestic stocks sufficient to avoid critical shortages.

/Interpretative

Interpretative Note to Sub-paragraph 2 (c)

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 and fisheries product, imported in any form", means the product in the form in which it is originally sold by its producer, and such processed forms of the product as are so closely related to the to the original product as regards utilization, that their unrestricted importation would make the restriction on the original product ineffective.

Interpretative Note to Paragraph 3

Paragraph 3 does not establish any new exception permitting the use of quantitative restrictions on imports. It is to be understood that the basic requirement of effective restriction on domestic production or marketing remains as a condition precedent for all cases in which import restrictions may be imposed under paragraph 2 (c) (i).

Interpretative Note to Sub-paragraph 3 (b)

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 to Sub-paragraph 3 (d)

The term "special factors" in sub-paragraph 3 (d) includes inter alia 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.

ARTICLE 22

Non-discriminatory Administration of Quantitative Restrictions.

1. No prohibition or restriction shall be applied by any Member on the importation of any product of any other Member country or on the exportation of any product destined for any other Member country, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.
2. In applying import restrictions to any product, Members shall aim at a distribution of trade in such product approaching as closely as possible to the shares which the various Member countries might be expected to obtain

/in the absence

in the absence of such restrictions, and to this end shall observe the following provisions:

- (a) wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article;
 - (b) in cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;
 - (c) Members shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;
 - (d) in cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Member countries having a substantial interest in supplying the product, shares based upon the proportions, supplied by such Member countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any Member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.
3. (a) In cases in which import licences are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licences granted over a recent period and the distribution of such licences among supplying countries; Provided that there shall be no obligation to supply information as to the names of importing or supplying enterprises.
- (b) In the case of import restrictions involving the fixing of quotas, the Member applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall

/not be excluded

not be excluded from entry; Provided that they may be counted, so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods, and Provided further that if any Member customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this sub-paragraph.

(c) In the case of quotas allocated among supplying countries the Member applying the restriction shall promptly inform all other Members having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

(d) If the Organization finds, on request from a Member, that the interests of that Member would be seriously prejudiced by the necessity of complying in relation to certain products with the obligation of sub-paragraph (b) and the obligation under sub-paragraph (c) of this paragraph to give public notice, by reason of the fact that a large part of its imports of such products is supplied by non-Members, the Organization shall release such Member from such obligations to the extent and for such time as it finds necessary to prevent such prejudice. Any request made by a Member pursuant to this sub-paragraph shall be acted upon promptly by the Organization.

4. With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) of Article 20, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restriction; Provided that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization, consult promptly with the other Member or the Organization regarding the need for an adjustment of the proportion determined or of the base period selected or for the re-appraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally upon the allocation of an adequate quota or its unrestricted utilization.

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any Member and, insofar as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or requirements under paragraph 2 of Article 18.

/Interpretative Note.

Interpretative Note

[See note relating to "special factors" in connection with the last sub-paragraph of paragraph 2 of Article 20]

The term "special factors" as used in this Article includes inter alia the following changes as between the various foreign producers which may have occurred since the representative period;

- (i) changes in relative productive efficiency;
- (ii) existence of new or additional ability to export; and
- (iii) reduced ability to export.

Interpretative Note

The first sentence of sub-paragraph 3 (b) of Article 22 is to be understood as requiring the Member in all cases to give not later than the beginning of the relevant period public notice of quotas fixed for a specified future period, but as permitting a Member, which for urgent balance of payments reasons is under the necessity of changing the quota within the course of a specified period, to select the time of its public notification of the change.

The above in no way affects the obligation of a Member under sub-paragraph 3 (a) where applicable.
