

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE F (ARTICLES 21, 23, 24)

REPORT OF WORKING PARTY ON ARTICLE 23

1. At its Eighth Meeting, 17 January 1948, Sub-Committee F appointed a working party to consider amendments submitted to Article 23. The Working Party consisted of the delegates of Australia, Belgium, Canada, Czechoslovakia, France, Norway, United Kingdom and the United States of America. The delegate of Greece was also appointed a member of the Working Party for the purpose of considering an amendment to Article 23 submitted by Greece.
2. Mr. Neil Perry (Canada) was elected Chairman of the Working Party.
3. The following amendments were referred to the Working Party by Sub-Committee F. They are listed according to the paragraph of Article 23 to which they refer and identified either as items in the Annotated Agenda (E/CONF.2/C.3/7) or as separate working papers submitted to the Sub-Committee.

Paragraph 1 (a)

Amendment by Czechoslovakia (W.14)

Paragraph 1 (b)

Entire paragraph - Amendment by Czechoslovakia (W.14)

Sub-paragraph (i) - Amendment by Norway (W.5)

Amendment by Belgium (W.6)

Sub-paragraph (ii) - Amendment by Belgium (W.6)

Amendment by France (W.3)

Paragraph 2

Amendment by Czechoslovakia (W.14)

Paragraph 3 (a)

Item 67 (Denmark)

Amendment by Czechoslovakia (W.14)

Paragraph 3 (c)

Item 68 (Mexico)

Amendment by Czechoslovakia (W.14)

Paragraph 3 - Proposed New Sub-paragraph

Item 69 (Italy)

Paragraph 5

Amendment by Czechoslovakia (W.14)

Paragraph 5 - Proposed New Sub-paragraph

Amendment by Norway (W.4)

/Paragraph 5

Paragraph 5 - Proposed New Sub-paragraph

Proposal by Greece (originally Item 78 and replaced by a new amendment submitted to the Working Party).

Proposed New Paragraph 6

Amendment by France (Item 74).

The Working Party also considered an amendment to Article 22 proposed by Syria and Lebanon (Item 60 of the Annotated Agenda) which was referred to it by Sub-Committee E of Committee III as falling more properly under Article 23.

4. In the course of its deliberations the Working Party heard statements from the delegates of Denmark, Italy, Lebanon, Mexico and Syria relating to their proposed amendments.

Representatives of the International Monetary Fund also participated in the meetings.

5. After a thorough consideration of the amendments mentioned above the Working Party has concluded that a substantial redraft of Article 23 is desirable and submits the text which appears at the end of this report, with the interpretative note annexed thereto. The new text does not require the interpretative note to paragraph 3 of Article 23 of the Geneva Draft and it has accordingly been dropped.

6. The major changes from the Geneva text of Article 23 are to be found in paragraphs 1, 2 and 4 of the revised Article.

7. In conjunction with the proposed revision of Article 23, it is considered desirable that paragraph 9 of Article 24 of the Geneva text (renumbered paragraph 8 in the text submitted by the Working Party on Article 24 and subsequently described by that number) be amended by the deletion of the phrase "Subject to paragraph 4 of this Article," at the beginning of the paragraph. As a consequence of this change the Working Party recommends that the interpretative note now attached to paragraph 4 of Article 24 of the Geneva text be attached to paragraph 8 of that Article, that the first sentence of the note be deleted, and that certain consequential drafting changes be made as shown in the attached text.

8. Paragraph 1 defines the exceptions to the rule of non-discrimination permissible during the post-war transitional period. This transitional period and its application in respect of individual members are defined by reference to the provisions of Article XIV of the International Monetary Fund or by reference to an analogous provision of a special exchange agreement pursuant to paragraph 6 of Article 24. The discriminatory measures, including adaptations thereof, permitted under paragraph 1 may be applied by a Member during the transitional period without the prior approval of the Organization. After the termination of the transitional period for the Member in question any departure from the rule of non-discrimination is subject to the prior
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approval of the Organization, pursuant to the provisions of paragraph 2.

9. Paragraph 4 permits a Member applying import restrictions in accordance with Article 21 to control its exports in such a manner as to increase its earning of currencies which it can use without deviation from the provisions of Article 22.

10. The effect of the Amendment to paragraph 8 of Article 24 is that the measures defined in that paragraph are not precluded by the provisions of this Section of the Charter.

11. Paragraphs 3 and 5 of the revised draft are substantially the same as paragraphs 4 (a) and 5 respectively of the Geneva text of Article 23. Paragraph 5 (b) of the revised article incorporates an amendment which is a consequential change resulting from certain amendments to Annex A of Article 17 which have been approved by Committee III with reservation by the delegations of Brazil and Uruguay. (See E/CONF.2/C.3/59, page 17).

12. It is considered by the Working Party that the above changes meet a large number of the objectives to which the amendments submitted were directed. In view of the extensive revision of Article 23 it is not practicable to indicate how particular amendments have been accommodated. However, the amendments submitted by the following countries are considered by the delegates of those countries to be covered by the new text:

(a) Belgium

(b) Czechoslovakia

Amendments to paragraphs 1 (a), 1 (b), 2, 3 (a), and 3 (c) are covered by Article 23 and the proposed amendment to paragraph 5 is covered by the proposed revision of paragraph 8 of Article 24.

(c) Denmark

(d) France

(e) Norway (amendment to paragraph 1 (b) (i))

(f) Lebanon

(g) Syria

13. The Norwegian delegate indicated that the new text of Article 93 on Relations with Non-Members, suggested by the delegation of Czechoslovakia and accepted by the Sub-Committee of the Sixth Committee (E/CONF.2/C.6/W.108) as a basis for discussion, met the major part of the problem to which his amendment on long-term agreements (E/CONF.2/C.3/F/W.4) was directed, and, accordingly, withdrew this amendment.

14. With respect to the amendment submitted by Italy (Item 69) the Working Party considers that paragraph 2 of the revised text takes account of the concept of relative injury.

15. The delegate of Mexico has informed the Working Party that his

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delegation is now reviewing the new text to see whether the purpose of its amendment (Item 68) is met.

16. The amendment submitted by Greece proposing a new Article 23A (Item 78) was replaced by an amendment to paragraph 5 of Article 23 submitted to the Working Party by the delegate of Greece. After the new text of Article 23, together with the change proposed in Article 24, were before this Working Party, the delegate of Greece advised the Working Party that these new texts went a long way to meet the problem of his country. However, he did not feel that his point was met entirely, particularly in the post-transitional period. The Working Party believes that further amendment in this respect would provide too wide an exception, and therefore recommends no further change in the text. The delegate of Greece advised the Working Party that his delegation reserved its position.

Article 23

Exceptions to the Rule of Non-discrimination

1. (a) The Members recognize that the aftermath of the war has brought difficult problems of economic adjustment which do not permit the immediate full achievement of non-discriminatory administration of quantitative restrictions and therefore require the exceptional transitional period arrangement set forth in this paragraph.
(b) A Member applying restrictions under Article 21 may, in the use of such restrictions, deviate from the provisions of Article 22 in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that Member may at that time apply under Article XIV of the Articles of Agreement of the International Monetary Fund, or under an analogous provision of a special exchange agreement pursuant to Article 24, paragraph 6.
(c) A Member applying restrictions under Article 21 and which was applying import restrictions to safeguard its balance of payments on 15 February 1948 in a manner which deviated from the rules of non-discrimination set forth in Article 22 may, to the extent that such deviation would not have been covered on that date by sub-paragraph (b) of this paragraph, continue so to deviate, and may adapt such deviation to changing circumstances. A Member which was a contracting party under the General Agreement on Tariffs and Trade on 15 February 1948 may, in the application of restrictions under Article 21, deviate from the rules of non-discrimination set forth in Article 22 in accordance with the provisions of paragraphs 1-3 of Article XIV of that Agreement, to the extent that such deviation would not have been covered on that date by sub-paragraph (b) of this paragraph. The Organization may, if it deems
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such action necessary in exceptional circumstances, make representations to any Member deviating from the provisions of Article 22 pursuant to this sub-paragraph that conditions are favourable for the termination of any particular deviation, or for the general termination of such deviations. The Member shall be given a suitable time to reply to such representations. If the Organization thereafter finds that the Member persists in unjustifiable deviation from the provisions of Article 22, the Member shall, within sixty days, limit or terminate such deviations as the Organization may specify.

(d) The policies applied in the use of import restrictions under sub-paragraphs (b) and (c) of this paragraph in the post-war transitional period shall be designed to promote the maximum development of multi-lateral trade possible during that period and to expedite the attainment of a balance of payments position which will no longer require resort to Article 21.

Member shall deviate from the provisions of Article 22 pursuant to sub-paragraphs (b) or (c) of this paragraph except during the post-war transitional period arrangement for that Member pursuant to Article XIV of the Articles of Agreement of the International Monetary Fund, or pursuant to an analogous provision of a special exchange agreement under Article 24, paragraph 6.

2. Notwithstanding the termination of the Member's transitional period arrangement pursuant to sub-paragraph 1 (e) of this Article, a Member which is applying import restrictions under Article 21 may, with the consent of the Organization, temporarily deviate from the principles of Article 22 in respect of a small part of its trade where the benefits to the Member or Members concerned substantially outweigh any injury which may result to the trade of other Members.
3. The provisions of Article 22 shall not preclude restrictions in accordance with Article 21 which are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the International Monetary Fund on condition that such restrictions are in all other respects consistent with Article 22.
4. A Member applying import restrictions under Article 21 shall not be precluded by this Section from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from Article 22.
5. A Member shall not be precluded by this Section from applying quantitative restrictions:
 - (a) having equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund; or

(b) under the preferential arrangements provided for in Annex A of this Charter, pending the outcome of the negotiations referred to therein.

Interpretative Note to Paragraph 2 of Article 23

One of the situations contemplated in paragraph 2 is that of a Member holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

Changes Proposed in Article 24

"9.7 8. Subject to paragraph 4 of this Article, Nothing in this Section shall preclude

(a) the use by a Member of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that Member's special exchange agreement with the Organization, or

(b) the use by a Member of restrictions or controls on imports or exports the sole effect of which, additional to the effects permitted under Articles 20, 21, 22 and 23, is to make effective such exchange controls or exchange restrictions."

Changes Proposed in Interpretative Footnote to Article 24

"Paragraph 4.7 Paragraph 8.

The word "frustrate" is intended to indicate, for example, that infringements by exchange action of the letter of any Article of this Charter shall not be regarded as offending against that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus For example a Member which, as part of its exchange control, operated in accordance with the Articles of Agreement of the International Monetary Fund, required payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund would not thereby be deemed to be offending against Article 20 or Article 22. Another example would be that of a Member which specified on an import licence the country from which the goods might be imported for the purpose not of introducing any additional element of discrimination in its import licences but of enforcing permissible exchange controls."
