

FIFTH COMMITTEE: INTER-GOVERNMENTAL COMMODITY AGREEMENTS

CHAPTER VI

(ARTICLES 52 - 67)

Secretariat Note

Two documents relating to Inter-Governmental Commodity Agreements (Chapter VI) are submitted for the information of delegates:

- (1) Chapter II of a "Review of International Commodity Arrangements" prepared by the Interim Co-ordinating Committee for International Commodity Arrangements and issued as United Nations Publication.

Sales No. 1947.11.9:

This chapter contains a statement of the principles of Chapter VI of the draft Charter for an ITO.

NOTE: Some mimeographed copies of the text of the Report of the I.C.C. for I.C.A. are available at the Secretariat for Chapter VI located in Room 4-99 of the Capitolio.

- (2) Relevant references extracted from the Report of the Geneva Sub-Committee on the Chapter on "Inter-Governmental Commodity Arrangements".

1. CHAPTER II - FROM "REVIEW OF INTERNATIONAL COMMODITY ARRANGEMENTS"
PREPARED BY THE INTERIM CO-ORDINATING COMMITTEE FOR
INTERNATIONAL COMMODITY ARRANGEMENTS
(United Nations Publications, Sales No. 1947 II.9)

GUIDING PRINCIPLES IN INTERNATIONAL
COMMODITY ARRANGEMENTS

It will be seen from the Resolution quoted in the previous paragraph that the Economic and Social Council of the United Nations has urged all member Governments to accept the principles of the appropriate chapter of the Draft Charter for an International Trade Organization as a guide in making commodity arrangements. The Committee therefore considers it appropriate to submit a short review of these principles.

The Draft Charter to which the Economic and Social Council resolution refers, has been prepared by an inter-governmental Preparatory Committee, established by the Council, and charged with the preparation of an annotated draft agenda for an International Conference. The First Session of the Committee was held in London in October and November 1946, and issued a Report containing a Draft Charter for an ITO, and this was examined by a Drafting Committee, which met in New York in January and February 1947. The Second Session of the Preparatory Committee met in Geneva from April to September 1947 and produced a revised draft, printed and published as the "Report of the Second Session of the Preparatory Commission of the United Nations Conference on Trade and Employment",* for consideration by an International Conference to be held in Havana on 21 November 1947.

The full text of Chapter VI, dealing with inter-governmental commodity arrangements, of this Draft Charter for an ITO is given as Appendix A to this Report, but the Committee feels that it might be helpful to set out in general terms the underlying principles of the Chapter.

Under the Draft Charter for an ITO measures otherwise debarred to Members of the proposed ITO are permitted when Governments employ inter-governmental commodity agreements conforming to the principles set out in Chapter VI. This would allow governments to employ multilateral commodity agreements which they deem desirable even if they involve certain measures otherwise prohibited under the Charter.

The Approach of the Draft Charter for an ITO to Commodity Problems

The Draft Charter for an ITO recognizes that the problems connected with primary commodities are of a special nature, and provides a systematic

* United Nations document E/PC/T/186.

/approach to the

approach to the solution of such problems. The basis of the procedures established is that there should be careful examination of all aspects of a commodity problem before action is taken, and that such examination should be conducted on a wide basis with adequate representation of all the interests involved. Agreements of a restrictive nature are only to be used in certain unavoidable circumstances, and the general desirability of increasing consumption of primary products is accepted. Such agreements may aim to stabilize the prices of primary commodities at a level which will be fair both to efficient producers and to consumers. Guiding principles for the administration of agreements are laid down and provision made for co-ordinating the activities of various international bodies concerned with commodity matters. However, no attempt is made to lay down the particular methods to be used in dealing with commodity difficulties. These have to be worked out by discussion and negotiation between the countries specially concerned with the particular commodities.

Inter-relation of Production, Consumption and International Trade

Experience during the great depression has shown that adequate standards of consumption and nutrition cannot be achieved merely by increasing production; satisfactory conditions of international trade are also necessary if these objectives are to be attained. Independent action to remedy the difficulties of the producers of a particular commodity may have adverse repercussions on the international trade position of other countries, and Chapter VI of the Draft Charter for an ITO is designed to ensure that countries do not make arrangements to improve their own individual position at the expense of others.

Adequate Examination Before Action

It is one of the basic principles of the Chapter that adequate examination shall be made of the production, consumption and trade situation of any commodity before the preparation of an international agreement. This examination involves the collection of relevant information and the consideration of the effects of any proposed action.

The Draft Charter envisages the following stages in the establishment and operation of an inter-governmental commodity agreement:

- (a) collection of adequate information about the production and consumption of/and the international trade in a commodity;
- (b) a consensus of opinion among countries substantially interested that an international agreement is desirable to deal with a commodity situation;

/(c) the holding of

(c) the holding of an international conference to reach agreement on measures to be adopted to meet the situation; and

(d) the administration of an agreement resulting from such a Conference through an inter-governmental organization.

The collection of the information and the obtaining of a consensus of opinion would normally be done through a study group; however, if adequate information is already available then a formal study group would not be necessary.

Wide Participation in Arrangements

The principle is adopted in the Charter of making participation on as wide a basis as possible consistent with expeditious handling of the problems. The procedure on this matter may be summarized as follows:

(a) Any Member country of ITO which considers that it has a substantial interest in a commodity may participate in the work of the study group. Non-Member countries may also be invited.

(b) Similar rules apply to participation in commodity conferences, but in practice it may be expected that some countries which did not wish to participate in the work of the study group would desire to attend.

(c) Participation commodity agreement is open at any time to all Member countries and to non-Members who may be invited.

(d) Every country participating in a commodity control agreement is entitled to have one representative on the body administering the agreement.

It is recognized that only through wide participation of substantially interested countries can action to remedy commodity difficulties be made effective.

This wide participation should prevent the formation of agreements serving the interest of a limited number of countries at the expense of producers or consumers in others. To help achieve this object it is also provided that publicity shall be given to an inter-governmental commodity agreement proposed, concluded or in operation.

Representation of all Interests

It is important that this wide participation should cover all interests, and that particularly in commodity control agreements a situation should be prevented in which a group or section, e.g. producers or consumers, obtain some advantage over other groups. The general principle is therefore accepted that there shall be adequate participation of importing as well as exporting countries and that the interests of countries which both produce and consume, but do not engage to any great extent in international trade,

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should also be adequately represented.

Expeditious Handling of Commodity Difficulties

Although the provisions of Chapter VI aim at preventing action based on inadequate examination of the position, at the same time they are designed to ensure that there is no delay in dealing with commodity difficulties. Participation in the study group of all countries substantially interested should in itself lead to speedier action where this is necessary. The Draft Charter specifically directs the ITO to deal promptly with the findings and recommendations of a study group. Special provision has been made to deal with any exceptional case in which there has been unreasonable delay in the proceedings of a study group or commodity conference.

Limitation on Use of Agreements of a Restrictive Nature

A distinction is made between "commodity control agreements", i.e. agreements which might restrict international trade to a substantial extent (which regulate prices), and other types of commodity agreements which would not have this effect. It is recognized that it is sometimes necessary to use commodity control agreements but the circumstances under which they may be employed are narrowly defined (see Article 59 of the Draft Charter for an ITO). In general their use is limited to primary commodity situations in which a burdensome surplus exists or is expected to arise, or where there is widespread unemployment or underemployment arising out of the special nature of such commodities. These agreements are also restricted to cases in which, in the absence of specific governmental action, the commodity situation would not be corrected by normal market forces alone in time to prevent hardship.

Expansionist Approach to Commodity Problems

It is fundamental to the approach of the Chapter that, wherever possible, steps shall be taken to expand world production and consumption. It is specifically provided that commodity control agreements shall be designed to assure the availability of supplies adequate at all times for world demand at reasonable prices and that, where practicable, they shall include measures designed to increase world consumption of the commodity. It is a principle of the Draft Charter that such agreements must provide for increasing opportunities to satisfy consumption requirements from economic sources of production.

It is also provided that if an agreement is aimed at securing the co-ordinated expansion of the aggregate world production of a primary commodity, it need not be subject to the restrictions of a commodity control agreement even though it contains provision for control of production or trade or for the future application of minimum prices.

/As a further means

As a further means of increasing consumption of a commodity it is provided that recommendations to this end made under any type of agreement shall be favourably considered by all Members of the ITO whether or not they are parties to a particular commodity agreement.

Stabilization Measures

It will be noticed that the Charter contemplates agreements to reduce fluctuations in prices of primary commodities. Various measures to achieve this objective may be adopted according to the circumstances of the particular commodity, and special schemes, such as buffer stocks arrangements, may be applied in appropriate circumstances. Commodity control agreements involving the regulation of production, exports or prices may be used to provide stability.

In the Report of the FAO Preparatory Commission on World Food Proposals certain stabilization measures applicable to agricultural production are discussed. For certain commodities, where the problem is mainly one of seasonal and cyclical price fluctuations, the Report recommends the creation of Price Stabilization Reserves, often called buffer stocks. The opinion is also expressed, that subject to adequate safeguards, quotas can be usefully written into international agreements for certain types of agricultural products. During and since the war long-term contracts have been used to assure markets for products as well as supplies for consumers. There are dangers in the wide use of such contracts and the FAO Preparatory Commission thought that such contracts should be made in conformity with the relevant principles of the suggested Charter for an ITO and puts forward certain propositions designed to secure this end.

Treatment of Commodity Problems on an Individual Basis

It is recognized that each commodity presents its own particular problems and no attempt is made in the Draft Charter for an ITO to suggest the specific methods to be used to achieve the objectives of an agreement, as, in general, these will have to be negotiated separately for each particular commodity. Directly related commodities such as cane and beet sugar, or synthetic and natural rubber may, however, be dealt with in a single agreement.

Safeguards During Transition

It is recognized that changes which are desirable in the long period may cause difficulties in the short run. Although such difficulties should not be allowed to stand in the way of desirable long-term adjustments, it is provided that in making arrangements for transfers to economic production due regard must be given to the need for preventing serious economic and social dislocation and to the position of producing countries suffering from exceptional disabilities.

/Efficient Administration

Efficient Administration of Agreements

In addition to stating general principles for the operation of commodity agreements, the Charter establishes some specific provisions for the administration of commodity control agreements. It will be observed from the relevant articles which appear in Section C of Chapter VI of the draft Charter for an ITO that it is contemplated that the administration will be carried out by separate commodity Councils, which may be largely autonomous in their operation, but with general supervision being exercised by the ITO.

Machinery is provided for the settlement of disputes which may arise between parties to an agreement and for the review and renewal of an agreement.

Co-ordination between International Organizations

It is important to avoid duplication and overlapping in the consideration of commodity problems, and provision is made for co-operation between interested inter-governmental organizations. Specific measures are laid down in the draft Charter for an ITO entitling such organizations to participate in the work of the various commodity bodies to be established under the procedures of the Charter; particular reference is made to the work of the Food and Agriculture Organization.

Special Types of Commodity Arrangements

- (a) Certain types of bilateral agreements are excluded from the operations of the Chapter and consequently would not be exempt from the commercial policy provisions of the draft Charter for an ITO.
- (b) Agreements relating solely to the equitable distribution of commodities in short supply would not need to comply with the draft Charter provisions relating to study groups and conferences or with those applying to control agreements.
- (c) Provision is made for inter-governmental commodity agreements designed to maintain and develop the natural resources of the world. Agreements dealing exclusively with conservation of exhaustible natural resources need not conform to the special provisions normally applying to control agreements even though some degree of regulation is involved.
- (d) Inter-governmental commodity agreements necessary for the protection of public morals or of human, animal or plant life or health are exempt from the provisions of Chapter VI of the Draft Charter for an ITO, provided they are not used for purposes inconsistent with the objectives of Chapter VI or with the Chapter of the Draft Charter relating to restrictive business practices.

/Work of Geneva Session

Work of Geneva Session of the United Nations Conference on Trade and Employment

The above summary is based on the text of the Draft Charter for an ITO as prepared at the Second (Geneva) Session of the Preparatory Committee of the United Nations Conference on Trade and Employment and reproduced as Appendix A to this Report. Since the First Session of the Preparatory Committee, there has been some development in the principles of the Charter, a clarification of the text, and a more precise definition of terms. It is now made clear that expansionist agreements need not be restricted to cases where a commodity is in short supply, and provision is explicitly made for agreements designed to assure the equitable distribution of commodities in short supply. The principle is now established that countries shall decide for themselves whether their interest in a commodity is sufficient to warrant their attendance at a study group or at a conference.

In earlier versions of the Draft Charter all agreements involving regulation of production, trade or prices were termed "regulatory agreements" and their use was strictly limited. It is now recognized that the purpose of regulation may not always be restrictive of production and trade, and this fact is taken into account in the definition of the term "commodity control agreements" which includes only agreements of a restrictive or potentially restrictive character. Provision for the regulation of production and for the possible application of stabilized prices may, for example, be essential to the success of agreements to expand the total production and consumption of basic foodstuffs. Similarly, agreements relating to the seasonal movement of trade may involve regulation without being restrictive. In such circumstances, the use of regulatory measures would in no way be inconsistent with the fundamental aims expressed in the Draft Charter for an ITO. Agreements of this kind need not be subject to the special condition attaching to commodity control agreements.

The position of inter-governmental organizations, deemed competent by the ITO, has been clarified and their rights stated in greater detail. They are now entitled to attend study groups and commodity conferences, whereas previously they could only do so at the request of the ITO. They are also entitled, on the basis of any study of a primary commodity which they submit to the ITO, to recommend to the latter that further study of the commodity be made or that a commodity conference be convened.

2. RELEVANT REFERENCES EXTRACTED FROM THE REPORT OF THE GENEVA SUB-COMMITTEE
ON THE CHAPTER ON "INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS"

Arrangement

The sub-committee gave careful consideration to the arrangement of the Chapter in view of the importance of securing as lucid and logical a presentation as possible, and bearing in mind the fact that the subject matter of the Chapter is of direct interest to an exceptionally wide public. In particular, it was thought advisable to specify at the outset the commodities with which the Chapter deals (Article 53). In the light of the new text, the sub-committee considered it necessary, in its arrangement of the Chapter, to set up four sections as follows:

- A. Introductory Considerations (Articles 52 - 54)
- B. Inter-Governmental Commodity Agreements in General (Articles 55 - 58)
- C. Inter-Governmental Commodity Control Agreements (Articles 59 - 63)
- D. Miscellaneous Provisions (Articles 64 - 67)

Article 52

The new Article 53 on Primary and Related Commodities is so worded as to permit an unqualified reference in Article 52 to special difficulties "which do not characterize the trade in manufactured goods".

Article 53

Primary and Related Commodities. Considerable discussion took place regarding the extent of the application of Chapter VI to non-primary commodities. Fears were expressed that, under the provisions of the New York text, it might prove easier to make an agreement for a non-primary than for a primary commodity. There was general agreement that Chapter VI should not exclude the possibility, in exceptional circumstances, of commodity agreements relating to non-primary commodities: these, however, should be subject to at least as stringent conditions as for primary products. There was support for a proposal to include a special Article dealing with inter-governmental agreements relating to non-primary commodities, but it was finally agreed that the problem could best be met by slightly amending the definition of a primary commodity, and including it in a broader Article dealing with all types of commodities to which inter-governmental agreements might be applied. This is the new Article 53 "Primary and Related Commodities". This provides that, in exceptional circumstances, and subject to any additional requirements which the Organization may lay down, Chapter VI may be applied to commodities which do not fall "precisely" under the stated categories. By the use of the term "precisely", it is intended to imply a fairly close relationship and therefore to exclude highly manufactured goods.

/Article 54

Article 54

In sub-paragraph (c), it was agreed that the two concepts of "prices fair to consumers and remunerative to efficient producers" and prices expressing the "long-term equilibrium between the forces of supply and demand" should be included, without implying a direct relationship.

In sub-paragraph (e) the text is now designed to cover expansionist agreements, where a commodity is not necessarily in actual short supply. The question was specifically raised whether inter-governmental commodity agreements approved by the Food and Agricultural Organization for the distribution of basic foods at special prices, were permitted under the Charter. The Sub-Committee considered that such agreements were permitted under the Charter and that the new text of paragraph (e) of Article 54 covered them.

Sub-paragraph (f) has been added to make it clear that, although agreements relating solely to equitable distribution are excluded from some of the provisions of Chapter VI, agreements which include equitable distribution as one of their objectives are covered by the Chapter.

Article 55

In paragraph 2, the principle is accepted that it is up to Members themselves to decide whether or not they have a sufficiently substantial interest in a commodity to attend a Study Group. (The same principle is accepted in relation to Commodity Conferences). The effect of accepting this principle is to open Study Groups and Commodity Conferences to all Members who wish to participate.

Article 56

On paragraph 1, there was some discussion on the number of Members who might reasonably request the Organization to call a Commodity Conference. It was finally agreed, in effect, that the Organization should call a Conference at the request of two or more Members whose interest in a commodity represents a substantial part of world production, consumption or trade.

The principle is accepted that Members shall decide for themselves whether or not their interest in a commodity is substantial enough to justify their participation in a commodity conference.

Article 57

On sub-paragraph (a) it was agreed to make it explicit that terms of subsequent accession to and participation in an agreement should normally be decided by the existing participants, and to leave with the Organization the power of final approval.

In sub-paragraph C the words "due consideration... under the Agreement" are intended to have the effect that, in the treatment of countries not participating in an agreement, consideration shall be given to the policies
/which they

which they adopt in relation to the agreement.

Article 58 - Types of Agreements

(a) The New York definition remained the same as the London text. It was a rigid definition for, whatever the purpose of a particular commodity agreement, any regulation of production, export or import or of prices made that agreement "regulatory" so that it could only be employed within the narrow limits. In the light of the relationship of Chapter VI to the rest of the Draft Charter, in particular to Chapter IV, it was felt that these precise definitions were justified.

(b) The Sub-Committee felt, however, that the use of the machinery of regulation of production or trade need not always be such as to reduce or limit production or trade. The conditions of supply and demand of particular primary commodities might well be such that inter-governmental commodity agreements would be needed to facilitate a long-term programme of expansion of production. For the successful operation of such agreements it might well be necessary to have a programme of regulated production. In this event, the operation of such regulatory machinery would in no way be inconsistent with the fundamental aims and aspirations of the Draft Charter.

(c) Other cases which seemed to call for a more flexible definition of "regulatory" were the agreements relating to the seasonal movements of trade, many of them arising out of the particular geographical conditions of production in the Northern and Southern hemispheres - agreements regulating seasonal exports and imports but not regulating the total volume of trade in the commodity over the year as a whole.

(d) Discussion revealed a clear desire for a new definition of "regulatory agreements". The Sub-Committee therefore attempted to draft a new definition which would enable agreements, covering the circumstances outlined in paragraphs (b) and (c) above, to be concluded outside the rigid bounds of Article 59 of Chapter VI. The general desire was to avoid so loosening the existing definition that commodity agreements which would operate to reduce or limit production or trade, would be permitted without the appropriate safeguards laid down in Section "c".

(e) In particular, it was felt that regulation of prices should not be permitted without these safeguards but the Sub-Committee recognized that agreements with the purpose of securing an expansion of production might require provision for the application of minimum prices as an assurance to producers against the possibility of a subsequent alteration in the relationship between supply and demand leading to a severe depression of prices.

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(f) The Sub-Committee found it impossible to arrive at a definition which would be automatic in its application, and has concluded that the Organization will itself have to make determinations on the basis of criteria to be set out in a new definition of "regulatory agreements". In view of this new definition, the Sub-Committee has decided to introduce the new title of "commodity control" agreements. The text of Article 58 represented in the Sub-Committee's opinion the most practical solution of the problem of having too rigid or too loose a definition, and the Sub-Committee is satisfied that this definition would enable agreements covering the circumstances described in paragraphs (b) and (c) above to be employed outside the strict limits set by Article 58.

(g) The Sub-Committee felt that the only satisfactory method of dealing with the question of price regulation discussed in paragraph (e) above, would be to provide for the use of minimum prices in expansion of production agreements through determination by the Organization that the circumstances justify such action.

(h) To sum up: paragraph 1 of Article 58 states that there are two classes of inter-governmental commodity agreements: (i) commodity control agreements and (ii) agreements other than commodity control agreements. Paragraph 2 defines a commodity control agreement; Paragraph 3 provides that, on request by a Member, Study Group or Commodity Conference, the Organization shall determine whether an existing or proposed agreement is or is not a commodity control agreement within the terms of paragraph 2. Paragraph 4 states which provisions of Chapter VI shall apply to the two classes of agreement; it leaves the Organization to stipulate, however, which, if any, of the provisions of Section C shall apply to agreements which it has determined are not commodity control agreements within the terms of paragraph 2 although they involve regulation of production or quantitative control of exports or imports. Paragraph 5 covers the special case of those expansionist agreements which provide for the future application of minimum prices. Although such agreements thus "involve the regulation of prices", the Organization may find that they are not commodity control agreements, and therefore not subject to the provisions of Section C., pending the operation of their price provisions. As soon as the latter provisions become operative, therefore, such agreements will then be commodity control agreements.

Article 59

There was considerable discussion on whether to include in this article a new sub-paragraph dealing with expansionist agreements. This point was

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met by the narrowing of the definition of a regulatory agreement. The observer of the Food and Agriculture Organization expressed his complete satisfaction with this method of dealing with the question.

Article 60

In sub-paragraph (c) the text has been rearranged and the term "national consumption and world market requirements" substituted for the term "world requirements". This was to meet the concern of one delegation in particular lest the New York text might have been interpreted in such a way as to interfere with the expansion of production to meet increasing internal demand.

Sub-paragraph (d) has been redrafted so as to exclude the possible interpretation that solution of the problem must be secured within the time limits of the agreement.

Article 63

This has been slightly amended in order to make it clear that it is the Commodity Council which shall refer its differences to the Organization after seeking to resolve them under the terms of the agreement.
