

United Nations

ECONOMIC  
AND  
SOCIAL COUNCIL

Nations Unies

CONSEIL  
ECONOMIQUE  
ET SOCIAL

RESTRICTED

E/PC/T/C.6/W.81  
19 February 1947

ORIGINAL: ENGLISH

PREPARATORY COMMITTEE OF THE UNITED NATIONS CONFERENCE  
ON TRADE AND EMPLOYMENT

LEGAL DRAFTING SUB-COMMITTEE

TEXT OF ARTICLES 26 TO 31 INCLUSIVE AS REDRAFTED AT THE FIRST READING.

Article 26

Restrictions to Safeguard the Balance of Payments

1. Members may need to use import restrictions as a means of safeguarding their external financial position and as a step toward the restoration of equilibrium in their balance of payments on a sound and lasting basis, particularly in view of their increased demand for imports needed to carry out their domestic employment, reconstruction, development or social policies. Accordingly, notwithstanding the provisions of Article 25, any Member may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard its balance of payments and monetary reserves.
2. The use of import restrictions under paragraph 1 shall be subject to the following requirements:
  - (a) No Member shall impose [new] maintain or intensify restrictions [or intensify existing restrictions] except to the extent necessary [to stop or] to forestall the imminent threat of, or to stop a serious decline in the level of its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves; due [allowance being made] regard should be paid in each case [for] to any special factors which may be affecting the level of the Members's reserves, [for] to any commitments or other circumstances which may be affecting its need for reserves, and to any special credits or other resources which may be available to protect its reserves.

(b) Members shall eliminate the restrictions when conditions would no longer justify the imposition of new restrictions their imposition or maintenance under sub-paragraph (a), and shall relax them progressively as such conditions are approached;

(c) Members shall not apply the restrictions in such a manner as to exclude completely imports of any class of goods.

3. (a) Any Member which is not maintaining restrictions under paragraphs 1 and 2 but which is considering the need for their imposition, shall, before imposing such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the imposition of such restrictions) consult with the Organization as to the nature of its balance-of-payments difficulties, the various corrective measures which may be available, and the possible effects of such measures on the economies of other Members. The Organization shall invite the International Monetary Fund to participate in the consultations. No Member shall be required during such discussions to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt.

(b) The Organization may at any time invite any Member applying import restrictions under paragraphs 1 and 2 to consult with it about the form or extent of the restrictions, and shall invite a Member substantially intensifying such restrictions to consult accordingly within thirty days. Members thus invited shall participate in such discussions. In the conduct of such discussions the Organization shall consult the International Monetary Fund and any other appropriate inter-governmental organizations, in particular with regard to the alternative methods available to the Member in question of meeting its balance-of-payments difficulties. The Organization shall, not later than two years from the day on which this Charter enters into force, review all restrictions existing on that day and still maintained applied under paragraphs 1 and 2 at the time of the review.

(c) any Member

(c) Any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes, under paragraphs 1 and 2 to maintain, intensify or impose, or for the maintenance, intensification or imposition of restrictions under specified future conditions. The Organization shall invite the International Monetary Fund to participate in the consultations. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or imposition of restrictions by the Member in question insofar as the general extent, degree and duration of the restrictions are concerned. To the extent to which such approval has been given, the action of the Member applying restrictions shall not be open to challenge under sub-paragraph (d), on the ground that such action is inconsistent with the provisions of paragraphs 1 and 2.

(d) Any Member, which considers that any other Member is applying import restrictions under paragraphs 1 and 2 in a manner inconsistent with the provisions of those paragraphs or of Articles 27 and 28, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organization. The Member applying the restrictions shall then participate in discussions of the reasons for its action. The Organization [shall,] if it is satisfied that there is a prima facie case that the complaining Member's interests are adversely affected, [consider the complaint. It] may [then,] after consultation with the International Monetary Fund on any matter falling within the competence of the Fund, and, if it considers [it] desirable, after submitting observations to [both] the parties with the aim of achieving a satisfactory settlement of the matter in question, recommend the withdrawal or modification

/of restrictions

of restrictions which it determines are being applied in a manner inconsistent with the provisions of paragraphs 1 and 2 or of Articles 27 or 28 or in a manner which unnecessarily damages the interests of another Member. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Member shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

(e) The Organization, in reaching its decision determination under sub-paragraph (d) shall not recommend the withdrawal or general relaxation of restrictions on the ground that the existing or prospective balance-of-payments difficulties of the Member in question could be avoided by a change in that Member's domestic employment, reconstruction, development or social policies. In carrying out such domestic policies, however, Members shall pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis.

4. In giving effect to applying the restrictions on imports under this Article, a Member may select imports for restriction on the grounds of the essentiality of other imports to essentiality in such a way as to give priority to imports required by its domestic employment, reconstruction, development or social policies and programmes. In so doing the Member shall avoid all unnecessary damage to the commercial interests of other Members.

5. If there is persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall seek consultation with the International Monetary Fund. The Organization may then, in collaboration throughout with the Fund, initiate discussions to consider whether other measures might not be taken, either by those

/countries

[Countries] Members whose balances of payments are under pressure or by those [Countries] Members whose balances of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental [agency or] organization to remove the underlying causes of the disequilibrium. On the invitation of the Organization Members shall participate in such discussions.

[6] 7 Members recognize that in the early years of the Organization all of them will be confronted, in varying degrees [by] with problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this Article or under Article 28, take full account of the difficulties of post-war adjustment.

[7] 6 Throughout this Section the phrase "import restrictions" includes the restriction of imports by state-trading [organizations] enterprises to an extent greater than that which would be permissible under Article 32.

#### Article 27

##### 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. Members shall observe the following provisions in applying import restrictions:

(a) The Administration of [these] such restrictions should be carried out in such a way as to result in a distribution of trade which approaches as closely as possible to the share which the various Member countries might be expected to obtain as the result of international competition in the absence of such restrictions.

/(b) Wherever:

(b) 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 sub-paragraph 3. (b).

(c) In cases in which quotas are not practicable, the restrictions may be applied by means of import licenses or permits without a quota.

(d) Import licenses or permits, whether or not issued in connection with quotas shall not (save for purposes of operating quotas allocated in accordance with sub-paragraph (e) of this paragraph) require or provide that the license or permit be utilized for the importation of the product concerned from a particular country or source.

(e) In cases in which a quota is allocated among supplying countries, the shares of the various supplying Member countries should in principle be determined in accordance with commercial considerations such as [e.g.] price, quality and customary sources of supply. For the purpose of appraising such commercial considerations, 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 their proportions of the total quantity or value of the product supplied by such Member countries during a previous representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

3. (a) In cases where import licenses are issued in connection with import restrictions, the Member applying the restriction shall provide,

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upon the request of any Member having an interest in the trade in the product concerned, all relevant information [as to] concerning the administration of the restriction, the import licenses granted over a past recent period and [as to] the distribution of such licenses among supplying countries Provided, however, 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 (whether or not allocated among supplying countries), 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.

(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, by quantity or value, currently allocated to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions imposed in accordance with [sub-] paragraph 2 (e) [of paragraph 2] of this Article or under [sub-paragraph (e) of] paragraph 2 (e) of Article 25, 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 imposing 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 base period selected or for the re-appraisal of the special factors involved.

5. The provisions of this Article shall apply [mutatis mutandis] to (a) any export restriction by quantity or value and (b) [to] any tariff quota established or maintained by any Member, and insofar as is applicable, the

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principle of this Article shall extend to any export restriction by quantity or value.

Article 26  
Exceptions to the Rule of Non-Discrimination

1. The provisions of this Section shall not preclude:

- (a) restrictions with equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund;
- (b) prohibitions or restrictions in accordance with paragraphs 2 (a) (i) or 2 (d) of Article 25;
- (c) conditions attaching to exports which are necessary to ensure that an exporting member country receives for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting Member country;
- (d) restrictions in accordance with Article 26 which either:
  - (i) are applied otherwise consistently with Article 27 against imports from other countries by a group of territories with a common quota in the International Monetary Fund, or
  - (ii) assist in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 27, a country whose economy has been disrupted by war
- (e) restrictions in accordance with Article 26 which both
  - [(iii)] (i) provide a Member with additional imports above the maximum total of imports which it could afford in the light of the [conditions in] requirements of paragraph 2 of Article 26, if its restrictions were consistent with Article 27, and
  - [(iv)] (ii) have equivalent effect to exchange restrictions, which are permitted to that Member under the Articles of Agreement of the International Monetary Fund or under

/the terms of

the terms of any special exchange agreement, which may have been made between the Member and the Organization under Article 29 Provided, that a Member, which is not imposing restrictions on payments and transfers for current international transactions, may apply import restrictions under [[III]] (1) of this sub-paragraph in special circumstances and only with the prior approval of the Organization in agreement with the International Monetary Fund.

2. If the Organization finds, after consultation with the International Monetary Fund on matters within the competence of the Fund, that import restrictions or exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided under this Article or in a manner which discriminates unnecessarily against the trade of another Member Country, the Member shall within sixty days remove the discrimination or modify it as specified by the Organization Provided that a Member may, if it so desires, consult with the Organization to obtain its [previous] prior approval for such discrimination [S], under the procedure set forth in paragraph 3 (c) of Article 26 and to the extent that such approval is given, the discrimination [S] shall not be open to challenge under this paragraph.

3. When three-quarters of the Members of the Organization have accepted the obligations of Article VIII of the Articles of Agreement of the

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International Monetary Fund, but in any event before 31 December 1951, the Organization shall review the operation of this Article, in consultation with the International Monetary Fund, with a view to the earliest possible elimination of any discrimination/s, under sub-paragraphs 1 (d) (iii) and (iv) 1 (e) (1) and (ii) of this Article, which restrict the expansion of world trade.

Article 29

Exchange Arrangements

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organization.

2. Members shall not seek by exchange action to frustrate the purposes of this Charter. The Organization and shall not seek by trade action to frustrate the purposes of the Articles of Agreement of the International Monetary Fund.

3. In order to avoid the imposition of trade restrictions and discriminations through exchange techniques and in order to avoid the danger of conflicting jurisdiction between the Organization and the International Monetary Fund in exchange matters, Members of the Organization shall also undertake membership of the International Monetary Fund Provided that any country, which is not a Member of the International Monetary Fund may become a Member of the Organization if upon accepting this Charter it undertakes to enter, within a time to be determined by the Organization

/after consultation

after consultation with the International Monetary Fund, into a special exchange agreement with the Organization which would become part of its obligations under this Charter, and Provided further that a member of the Organization, which ceases to be a member of the International Monetary Fund, shall forthwith enter into a special exchange agreement with the Organization, which shall then become part of its obligations under this Charter.

4. 5 A Member which has made a special exchange such an agreement under paragraph 3 of this Article, undertakes to furnish the Organization with such the information as which it may require, within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund, in order to carry out its functions relating to this special exchange such agreement.

5. 4 A special exchange agreement between a Member and the Organization under paragraph 3 of this Article must provide to the satisfaction of the Organization, in collaboration collaborating throughout with the International Monetary Fund, that the purposes common to the Organization and the Fund will not be frustrated as a result of action in exchange matters by the Member in question.

6. The Organization shall seek and accept the opinion of the International Monetary Fund as to whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement and shall act in collaboration with the International Monetary Fund on all questions which may arise in the working of a special exchange agreement under this Article.

#### Article 30

##### General Undertaking Regarding Subsidies - Elimination of Export Subsidies - Exceptions

1. If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into its territory, the Member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the estimated effect of the subsidization on the quantity of the affected product or products, imported

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into or exported from the territory of the Member country and as to the conditions making the subsidization necessary. In any case in which it is determined that serious prejudice to the interest of any other Member is caused or threatened by any such subsidization, the Member granting the subsidization shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.

2. (a) No Member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain any other system, which results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability; The preceding sentence Provided that this shall not be construed to prevent any Member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically, from remitting such duties or taxes which have accrued, or from using the proceeds of such duties or taxes to make payments to domestic producers;

(b) Members shall give effect to the provisions of this paragraph at the earliest practicable date, but in any event not later than three years from the day on which this Charter enters into force.

If any Member considers itself unable to make the provisions of this paragraph effective in respect of any specified product or products upon the expiration of such period, such Member shall, at least three months before the expiration of such period, give to the Organization a notice in writing to that effect, requesting a specific extension of the period accompanied by a complete analysis of the practices system in question and the facts justifying them it and an indication as to the extension of the period desired. It shall then be determined whether the extension requested should be made.

3. A system for the stabilization of the domestic price or of returns to domestic producers of a primary product, which results over a period in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, may be determined by the Organization not to involve a subsidy on exportation under the terms of paragraph 2 of this article if it has also resulted over a period in the sale of the product for export at a price higher than the comparable price charged for the like product to domestic buyers, and if the system is so operated, either because of the effective limitation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interest of other Members.

4. (a) In any case of subsidization of a primary commodity, if a Member considers that its interests are seriously prejudiced by the subsidy or if the Member granting the subsidy considers itself unable to comply with the provisions of paragraph 2 of this article within the time limit laid down therein, the difficulty may be determined to be a special difficulty of the kind referred to in Chapter VII, and in that event, the procedure laid down in that Chapter shall be followed;
- (b) If it is determined that the measures provided for in Chapter VII have not succeeded, or do not promise to succeed, within a reasonable period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 shall cease to apply in respect of such product as from the effective date of such determination and shall not be re-applied in respect of such product until a date determined in accordance with procedures approved by the Organization.

/5. Notwithstanding

5. Notwithstanding the provisions of paragraph 2 and [sub-paragraph] 4 (b) of this article, no Member shall grant any subsidy on the exportation of any product which has the effect of acquiring for that Member a share of world trade in that product in excess of the share which it had during a previous representative period, account being taken insofar as practicable of any special factors which may have affected or may be affecting the trade in that product. 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 granting the subsidy: Provided, that such Member shall, upon the request of any other Member having an important interest in the trade in that product, or upon the request of the Organization, consult promptly with the other Member or with the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.

6. Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with paragraph 6 of Article 65.

#### Article 31

##### Non-Discriminatory Administration of State-Trading Enterprises

1. If any Member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product, the commerce of other Members shall be accorded treatment no less favourable than that accorded to the commerce of any country other than that in which the enterprise is located in respect of the purchase or sale by such enterprise of any product. To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as

/price,

price, quality, marketability, transportation and other terms of purchase or sale and also any differential customs treatment maintained consistently with the other provisions of this Charter.

2. The provisions of paragraph 1 relating to purchases or imports by state enterprises shall apply to purchases or imports of products for re-sale or for use in the production of goods for sale. With respect to purchases or imports by state enterprises of products for governmental use and not for re-sale or for use in the production of goods for sale, Members shall accord to the commerce of other Members fair and equitable treatment, having full regard to all relevant circumstances.

3. This Article shall apply to any enterprise, organ or agency in which there is effective control by a Member government or over whose trading operations a Member government is in a position to exercise (exercise) effective control by virtue of the special or exclusive privileges granted to the enterprise.

NOTES

Article 26:

The Delegate for Belgium-Luxembourg suggested the following addition to sub-paragraph (d) of paragraph 3:

"The Organization may initiate proceedings, analogous to the foregoing on its own motion, if it considers that any Member is applying import restrictions under paragraphs 1 and 2 in a manner inconsistent with the provisions of paragraphs 1 and 2, or of Article 27."

This suggestion was supported by the Delegates for Canada and the United States.

Concerning paragraph 4, the Sub-Committee was uncertain to make out what exactly had been referred to it. If it had to consider the choice between the two texts enclosed in square brackets, it preferred the second. If, on the other hand, it were supposed to consider the question whether the words "imports required" should be retained or deleted, the Sub-Committee wishes

/to refer

to refer the question back to the Drafting Committee as involving a change in substance.

Article 27:

The Delegate for China stated that his previous objection to the representative period mentioned in sub-paragraph 2 (e) ~~/F/~~ of Article 25 was applied also to paragraph 4 of Article 27.

Article 30:

(a) The Delegate for Cuba reserved his position regarding the deletion of the words "would be considered as a case under paragraph (1) from sub-paragraph (2) (a) of the text drafted at the First Session.

(b) The Delegate for China did not maintain the reservation entered by his delegation at the First Session regarding paragraph (2) provided that its substance was covered by the Articles dealing with balance of payments. He maintained his delegation's reservation regarding sub-paragraph (4) (c).

(c) The Legal Drafting Sub-Committee was asked to consider the question raised in the following paragraph of the Report of the First Session:

SECTION D

"1. (d) (xii) Sub-paragraph (4) (a) of the revision indicates that the consultative procedure of Chapter VII with reference to primary products in the case of which special difficulties may arise, may be applied when subsidies on such products call for determination by consultation under the terms of paragraph (1) or (2). In this connection and in relation to the provisions of paragraph 3 of the United States Draft Charter, it is suggested that the Drafting Committee consider Article 30 in connection with Chapter VII and with paragraph (6) of Article 66, with a view to simplifying the texts in question. They are intended to provide firstly, a uniform type of consultative procedure for dealing with primary commodities in the case of which special

/difficulties

difficulties may arise either in the initial period of transition or thereafter, and secondly, an adequate consultative procedure for dealing with non-primary products according to the general intentions of Article 30 expressed in the opening sentence of this Section."

- (d) The Delegates for Canada and China reserved their positions regarding sub-paragraph 4 (b). The Delegate for China submitted his opinion in writing for insertion in the Report.

Article 31:

- (a) The Delegates for Chile and New Zealand reserved their positions regarding the insertion of the words "or for use in the production of goods for sale" in paragraph 2.
- (b) The Delegate for Chile reserved his position regarding paragraph 3 as redrafted.

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