

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

REPORT OF SUB-COMMITTEE ON ARTICLE 30

1. The Sub-Committee was appointed by Commission B and consisted of representatives of: Australia, Lebanon, the Netherlands, New Zealand, the United Kingdom and the United States.
2. Mr. George Hakim (Lebanon) was elected Chairman of the Sub-Committee.
3. The Sub-Committee held 8 sessions. By invitation of the Sub-Committee, and in accordance with the decision of Commission B, representatives of several countries not members of the Sub-Committee attended its meetings. Delegates of Canada, Chile, Czechoslovakia and France took an active part in the discussions on points of special interest to them.
4. The Sub-Committee was able to reach unanimous agreement on all except one point, to which attention is drawn in the note on Article IV below. This substantial measure of agreement was due to the spirit of conciliation in which Members of the Sub-Committee approached the problems under discussion.
5. The text of Section D - Subsidies - of Chapter V as agreed (subject to the above exception) by the Sub-Committee is attached as an Annex to this Report. All footnotes to the New York text have been taken into consideration by the Sub-Committee: it has not been considered necessary to retain them.
6. In regard to the recommendation by the Sub-Committee on Chapter III (see E/PC/T/W/220), the Sub-Committee is satisfied that, so far as primary commodities are concerned, Article 30 adequately meets the requirements of Article 8 regarding safeguards for Members subject to external deflationary pressure.
7. Arrangement

The Sub-Committee recommends the division of Article 30 into five Articles as follows:
 - I. Subsidies in general
 - II. Additional Provisions on Export Subsidies.

- III. Special Treatment of Primary Commodities.
- IV. Undertaking regarding Stimulation of Exports.
- V. Procedure.

Article 30 in the New York text constituted a complete Section (D) of Chapter V, and covered a considerable variety of issues. The above division is suggested for reasons of clarity and balance. In particular it is desired to emphasize the distinction between subsidies of any kind which operate to increase exports or reduce imports, export subsidies proper, and subsidies on primary commodities, as each case requires different treatment.

The notes which follow refer throughout to the new numbering of Articles necessitated by the proposed arrangement.

8. Notes on proposed text.

ARTICLE I - Subsidies in General.

This Article consists of paragraph 1 of the New York text. No change has been made in the wording.

ARTICLE II - Additional Provisions on Export Subsidies.

Paragraph 1 corresponds to the first part of sub-paragraph (a) of paragraph 2 of the New York text. The only drafting change is the insertion of the words "in either case" in the third line. This has been done to make it quite clear that the words which follow relate to "subsidy" as well as "system".

The Sub-Committee was of the opinion that paragraph 1 should not be interpreted so as to prevent countries from selling their products at current world market prices, even although these may be lower than the prices charged in some parts of the domestic market, provided that these circumstances are not the result of a direct or indirect subsidy or of the establishment of any other system of like effect. It was felt that the words after "due allowance being made" covered such cases.

Paragraph 2 corresponds to the second part of sub-paragraph (a) of paragraph 2 of the New York text. The Sub-Committee agreed that the exemption from, or remission of, domestic duties or taxes in respect of exported products should not be considered as a subsidy and would not, therefore, fall under the provisions of the Section. The use of the proceeds of such duties or taxes to make payments to domestic producers was, however, a form of subsidisation, and would have to conform to the provisions of Article . . . Such payments would in addition be subject to the provisions of paragraph 1 of Article II if the extent to which they had the effect of subsidising exports was more than the amount of the duties or taxes remitted or not imposed.

Paragraph 3 corresponds to sub-paragraph (b) of paragraph 2 of the New York text.

The question of the time limit within which existing export subsidies should be discontinued was discussed at length. It was generally felt that the present period of shortages would facilitate early compliance with this requirement, whilst the position in three years' time might be much less favourable. Two other considerations were taken into account in favour of a shorter period: firstly, that the Charter might not come into force for some time; secondly, that provision is made for extension of the period on request by any Member which finds itself unable to conform to the stated period. The Sub-Committee tentatively agreed on a period of two years, leaving the matter to the Commission to decide.

Paragraph 4 is a new provision designed to deal with the case where an export subsidy granted by a non-Member is affecting a Member's exports to a third market. The Sub-Committee considered that a Member should have the right to take defensive measures against such action by a non-Member, since the latter is not bound by any obligation under the Charter and cannot be challenged through the Organization. The interests of other Members whose trade might be affected by the counter-subsidy are safeguarded by the proviso regarding consultation.

The Sub-Committee did not consider that this new provision affected the general question of relations with non-Members. It decided nevertheless to draw the attention of the Sub-Committee dealing with Article 36 to this paragraph.

ARTICLE III. Special Treatment of Primary Commodities.

Paragraph 1 corresponds to paragraph 3 of the New York text. The provisions of the latter were, however, purely permissive, i.e. "A system....may be determined....". The new text provides that the system shall be considered not to involve an export subsidy if it is determined that the stated conditions apply.

There was considerable support for the proposal to provide in this paragraph for the institution of new stabilisation schemes which could not be expected to have already resulted in export sales at higher than domestic prices. The proposal was eventually withdrawn: The Australian delegate, however, only agreed to this withdrawal on condition that he was satisfied with the final agreed text of Article 17, "Anti-dumping and countervailing Duties", which includes a reference to Article 30.

Paragraph 2 constitutes sub-paragraph (a) of paragraph 4 of the New York text. Reverting to the London text, the word "deemed" has been substituted for the word "determined".

Paragraph 3 corresponds to sub-paragraph (b) of paragraph 4 of the New York text. There was considerable discussion on

whether it should be mandatory for the Organization to grant exemption if the measures provided for in Chapter VII had not succeeded or did not promise to succeed, and if it was determined that the circumstances described in Article 53 (52 in New York text) applied. There was support for the proposal that in these circumstances the Organization should be free to decide whether or not to grant such exemption. It was finally agreed to make the granting of exemption mandatory on the Organization subject to the additional condition that it must be determined that the subsidization will not be so operated as to stimulate exports unduly or otherwise seriously prejudice the interests of other Members. The United States delegate undertook to consider the new text, but reserved his final acceptance, relating his reservation to the amendment which he had proposed to Article IV (See note below).

ARTICLE IV.

This Article corresponds to paragraph 5 of the New York text, to which no amendment was originally proposed. It was not discussed in Commission and was not specifically included in the terms of reference of the Sub-Committee.

In the New York text, this paragraph imposed upon Members an obligation to refrain from granting export subsidies which would have the effect of increasing their share of world trade in the product concerned.

The question was raised in connection with the new text whether the undertaking contained in Article IV should apply to export subsidies as defined in Article II or to any kind of subsidy which had the effect of increasing a Member's share of world exports. The United States delegation took the view that it should apply to the latter, and, to make this clear, proposed the amendment shown in the Annex. It related this view to its reservation regarding the change which had been made in paragraph 3 of Article III.

A majority of the Sub-Committee could not accept the United States amendment. Some delegates felt that it would upset, in favour of importing countries, the delicate balance between the interests of exporting and importing countries which the Charter provided; exporting countries would be prevented from using domestic subsidies which had the effect of increasing their share of world exports, but importing countries would be free to use similar subsidies to increase home production and reduce their share of world imports.

In reply, the United States delegation stated that the Charter already gave importing countries the right to use subsidies having the effect of reducing imports, and this right was only limited by the provisions of Article I. It remained unaffected by the proposed amendment. This attempted merely to adjust the balance as between exporting countries, which had been upset by the changes made in paragraph 3 of Article III, as a result of which export subsidization of primary commodities was now prohibited, even after the failure of the procedures under Chapter VII, until it was determined that it would not stimulate exports unduly or otherwise seriously prejudice the interests of

other Members. The United States delegation was prepared to withdraw its amendment to Article IV if the additional condition (i.e. the words: "and that the subsidization will not be so operated as to stimulate exports unduly or otherwise seriously prejudice the interests of other Members") in paragraph 3 of Article III was deleted.

Some delegates expressed willingness to support the United States amendment provided that the Article was applied to importing as well as exporting countries, that is to say, if the undertaking was also applied to subsidies which have the effect of reducing a Member's share of world imports of the commodity in question. Other delegates pointed out that this proposal would be entirely unacceptable to the under-developed countries, as it would drastically interfere with their right to use subsidies to increase domestic production.

The Sub-Committee, having failed to reach agreement, and in view of the fact that this issue was not included in its terms of reference, decided to submit it to the Commission, summarising the main arguments put forward in the discussion as well as the possible alternatives proposed. These alternatives were summed up as follows:

- (1) That the undertaking contained in Article IV should apply to export subsidies only (New York text); or
- (2) That the undertaking contained in Article IV should apply to export subsidies only, and that the new requirement for the use of an export subsidy be deleted from paragraph 3 of Article III; or
- (3) That the undertaking contained in Article IV should apply to any form of subsidy which had the effect of increasing a Member's share of world exports (United States amendment); or
- (4) That the undertaking contained in Article IV should apply to any form of subsidy which had the effect of increasing a Member's share of world exports, and that it should also apply to any form of subsidy which had the effect of reducing a Member's share of world imports. In that case, Articles I and IV could be combined in a single Article.

ARTICLE V.

This Article corresponds to paragraph 6 of the New York text. As redrafted it obviates the existing reference to such determinations under Article 30 contained in Article 66 (4). The attention of the Sub-Committee dealing with Chapter VIII has been drawn to this point.

A N N E X

CHAPTER V

SECTION D. - SUBSIDIES

ARTICLE I

(par.1)*

SUBSIDIES IN GENERAL

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 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.

ARTICLE II

(par.2

ADDITIONAL PROVISIONS ON EXPORT SUBSIDIES

(a) first
part)

1 No Member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain any other system, which in either case 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 the conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

(par.2(a)2.
second
part)

2. The provisions of paragraph 1 shall not prevent any Member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically or from remitting such duties or taxes which have accrued. The use of the proceeds of such duties or taxes to make payments to domestic producers, however, shall be considered as a case under Article I, except in so far as such payments subsidize exportation, in the sense of paragraph 1 of this Article, by more than the amount of the duties or taxes remitted or not imposed.

(par.2(b))

3. Members shall give effect to the provisions of paragraph 1 at the earliest practicable date, but in any event not later than two years from the day on which this Charter enters into force. If any Member considers itself unable to make the provisions of paragraph 1 effective in respect of any specified product or products

* References in brackets are to corresponding paragraphs in New York text of Article 30.

upon the expiration of such period, such Member shall, at least three months before the expiration of such period, give to the Organization notice in writing requesting a specific extension of the period and accompanied by a complete analysis of the system in question and the facts justifying it. It shall then be determined whether the extension requested should be made.

(new para- graph) 4. Nothing in paragraph 1 shall prevent any Member from subsidizing exports of any product to the extent and for such time as may be necessary to offset a subsidy granted by a non-Member affecting its exports of such product. Provided that such Member shall, upon the request of the Organization or of any other Member which considers that its interests are adversely affected by such subsidy, consult with such other Members or with the Organization with a view to reaching a satisfactory adjustment of the matter.

ARTICLE III
SPECIAL TREATMENT OF PRIMARY COMMODITIES

(par.3)

1. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times 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, shall be considered not to involve a subsidy on exportation under the terms of paragraph 1 of Article II, if it is determined

(a) that the system has also resulted in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market;

and

(b) that the system is so operated either because of the effective regulation of production or otherwise as not to stimulate exports unduly or otherwise seriously prejudice the interests of other Members.

(par.4(a)) 2. 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 3 of Article II within the time limit laid down therein, the difficulty may be deemed 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.

(par.4(b)) 3. If the measures provided for in Chapter VII have not succeeded, or do not promise to succeed, within a reasonable period of time, either because no agreement has been

