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

COMMISSION A

REPORT OF SUB-COMMITTEE ON ARTICLES 25 AND 27

INTRODUCTION

1. The Sub-Committee was appointed by Commission A and consisted of representatives of Brazil, China, Czechoslovakia, Netherlands, Norway, the United Kingdom and the United States.
2. Mr. Johan Melander (Norway) was elected Chairman of the Sub-Committee.
3. The Sub-Committee held 5 sessions. By invitation of the Sub-Committee, and in accordance with the decision of Commission A, representatives of several countries not Members of the Sub-Committee attended its meetings and took part in the discussions of points of special interest to them.
4. The Sub-Committee has been able to present a single text. The large measure of agreement reached has been due to the spirit of conciliation in which the discussions were conducted by all Members. Reservations on those points on which it has been impossible to reach unanimity, are set out in the Report.
5. The text of Articles 25 and 27 as agreed by the Sub-Committee is attached as an Annex to this Report; all notes refer to the new text. The footnotes contained in the New York Report have been taken into consideration: it has not been considered necessary to retain them.

GENERAL NOTES

1. Following the ruling of Commission A that problems relating to economic development should in the first instance be concentrated in the Sub-Committee dealing with Chapter IV, the Sub-Committee examined the text without entering into these problems. Accordingly, proposals specifically dealing with these problems were not discussed by the Sub-Committee, but brought to the attention of the Sub-Committee dealing with Chapter IV. These were the Chinese amendment (E/PC/T/W.75), Chilean reservation (D.C. Report, page 10, note (c)) and Indian reservation (D.C. Report, page 10, note (e)) relating to sub-paragraph 2(e) of Article 25; and Cuban proposal (E/PC/T/W.194) and Syro-Lebanese proposal (E/PC/T/W.223, page 10, note 15) for additional provisions in sub-paragraph 2 of Article 25.
2. The majority of the Sub-Committee considered the term "special factors", used in sub-paragraph 2(c) of Article 25 and sub-paragraphs 2(d) and 4 of Article 27 to include changes in relative productive efficiency as between domestic and foreign

producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Charter. The delegate of China reserved his position on this interpretation.

ARTICLE 25

The Sub-Committee considers that the note in the London Report (Chapter III, Section C, Paragraph 1, sub-paragraph (n) and (o)) dealing with existing preferential arrangements not effected by differential rates of duty, should be maintained in the Report of the Second Session. The Sub-Committee has drawn the attention of the Tariff Negotiations Working Party to this note with a view to including an appropriate provision in a protocol to the General Agreement on Tariffs and Trade.

Paragraph 1

The Sub-Committee took no decision on a proposal to delete the words "Except as otherwise provided in the Charter", but referred it to the Legal Drafting Committee to be dealt with in conformity with any general decision in respect of similar clauses elsewhere in the Charter.

Paragraph 2

1. The Sub-Committee agreed with the suggestion made by the Sub-Committee dealing with Articles 1⁴, 15 and 2⁴ that the substance of the old sub-paragraph (a) should be applicable to all provisions of Chapter V. The Sub-Committee considered that the same should apply in respect of the old sub-paragraphs (d) and (f) and accordingly decided to recommend the transfer of these three provisions to Article 37 - General Exceptions, leaving Commission A to make any change in the text, which might be necessary as a result of the transfer. The remaining sub-paragraphs have been renumbered accordingly.

2. In sub-paragraph (a) the words "prevent or" have been inserted to enable a Member to take remedial action before a critical shortage has actually arisen. A further slight change in the wording was made to indicate the view of the Sub-Committee that for the purposes of this provision the importance of any product should be judged in relation to the particular country concerned.

3. Sub-paragraph (b) has been widened so as to include marketing regulations.

In the text of sub-paragraph 2(c) two changes of substance have been made:

4. The Sub-Committee considered that domestic measures envisaged under (i) and (ii) were liable to be ineffective, if the right to apply import restrictions were strictly limited to the "like" product. The provision was therefore widened to cover import restrictions on products which are directly substitutable for the domestic product and of which there is no substantial domestic production. The word "directly" was inserted to assist in the interpretation of this provision.

The Sub-Committee, having given careful consideration to this wording, has brought it to the attention of the Sub-Committee dealing with Articles 14, 15 and 24 with a view to considering as to whether conformity should be established between this Article and a similar provision in Article 15.

5. Under (iii) a new provision has been inserted. Its purpose is to enable a country to restrict the domestic production of animal products which is wholly or mainly dependent on an imported commodity of which the domestic production is negligible.

6. The Sub-Committee, by majority decision, declared itself unable to accept a proposal that governmental measures operating to regulate prices should be included under sub-paragraph (c) (i). The delegate of China entered a reservation on this matter.

7. It is the understanding of the Sub-Committee that the term "in any form" covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective.

8. The deletion, at the end of this sub-paragraph, of the provision for consultation was made to avoid duplication of the similar provision contained in paragraph 4 of Article 27.

9. The delegate of China reserved his position in respect of the whole of sub-paragraph 2(c), pending the conclusions arrived at by the Sub-Committee dealing with Chapter IV.

Paragraph 3

This provision corresponds to paragraph 7 of Article 26 of the New York text. The Sub-Committee agreed with a suggestion made by the Sub-Committee on Articles 26, 28 and 29 to the effect that this provision, being applicable to the entire Section C of Chapter V, would have its right place in Article 25. Since Section C and Article 32 deal with export as well as import restrictions, the wording has been changed so as to include both types of restrictions.

ARTICLE 27

Paragraph 1

No change has been made in the text of the New York Draft.

Paragraph 2

1. The Sub-Committee, whilst agreeing with the principle expressed in the old sub-paragraph (a), considered it to be a rule too general to warrant its inclusion on the same level as the subsequent concrete provisions of this paragraph. In view of the difficulty of the practical application of this provision the Sub-Committee considered that its sense should serve as a guiding principle rather than administrative rule and for this reason be incorporated in the introductory sentence of this paragraph. The following sub-paragraphs have been re-numbered accordingly.

The French delegate reserved his position in respect of the omission from this provision of the words "as a result of international competition" or, alternatively, "as a result of international trade based on commercial considerations".

2. The wording, in the New York draft, of sub-paragraphs (a) and (b) has remained unchanged.

3. In sub-paragraph (c) a drafting change has been made.

The Sub-Committee could not accept a suggestion for this provision to be amended so as to allow a Member to issue licenses or permits for imports from a particular country, if this was necessary for balance-of-payments reasons. It was felt that such an exception would have its right place in the context of Articles 26 or 28 and, accordingly, the attention of the Sub-Committee on Articles 26, 28 and 29 was drawn to this sub-paragraph with a view, if it thought fit, to adding a provision to Articles 26 or 28 covering the case in question.

The Czechoslovak Delegate reserved his position on this sub-paragraph pending the decision regarding the insertion of an appropriate provision in Articles 26 or 28, and also for the reasons stated in the Note to paragraph 3, and wished to have the view of the Czechoslovak Delegation recorded as follows:

The principle of granting import licenses only "in blank" (without mentioning the exporting country - even in cases in which the exporting country has been determined in the application by the importer himself) is not applicable in practice, except in time of an entirely free and unhampered convertibility of world currencies. Such a situation, of course, does not exist at present, and is hardly to be expected to develop in the near future.

4. In sub-paragraph (d) the Sub-Committee omitted the phrase establishing "commercial considerations" as a rule for the allocation of quotas, because it was considered that its application by governmental authorities might not always be practicable. Moreover, in cases where it was practicable, a Member could apply this consideration in the process of seeking agreement, consistently with the general rule laid down in the opening sentence of paragraph 2.

Paragraph 3

No change of substance has been made in the wording of the New York draft.

The Czechoslovak Delegate reserved his position on the requirement of public notice in sub-paragraphs (b) and (c) and wished to have it recorded in the following terms:

The Czechoslovak Delegation while not opposed to the principle of public notice, cannot accept it as an immediate obligation, as long as the countries with whom Czechoslovakia has been conducting the major part of her foreign trade, are not following a similar procedure. The obligation of giving public

notice of global quotas and of the allocation of shares is, in the particular situation of Czechoslovakia, too rigid a rule and, unless practised generally, liable to have a harmful effect upon the expansion of foreign trade in general, and the economic interests of Czechoslovakia in particular. In the view of the Czechoslovak Delegation it should be sufficient to supply full information to Members substantially interested in the exportation of the respective commodity.

Paragraph 4

In the consultation clause at the end of this paragraph the words "of the proportion determined or" have been inserted, so as to give it the same application as the similar clause in Article 25(c) which was deleted to avoid duplication.

Paragraph 5

No change has been made in the wording of this provision. It may require to be amended in the light of any changes that may be agreed on in the text of Article 15.

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ANNEX

ARTICLE 25

General Elimination of Quantitative Restrictions

1. ~~Except as otherwise provided in this Charter,~~⁷ no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country.

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

(a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member country.

(b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade. If, in the opinion of the Organization, the standards or regulations adopted by a Member under this sub-paragraph have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards or regulations provided that it shall not request the revision of standards internationally agreed under paragraph 6 of Article 22.

(c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate :

- (i) to restrict the quantities permitted to be marketed or produced of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product is directly substitutable; or
- (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product is directly substitutable, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or
- (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any Member applying restrictions on the importation of any product pursuant to this sub-paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of the restrictions. In determining this proportion

the Member shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.

3. Throughout this Section the terms "import restrictions" or "export restrictions" include restrictions by state-trading enterprises to an extent greater than 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. In applying import restrictions to any product Members shall aim at a distribution of trade in such product approaching as closely as possible to the shares which the various Member countries might be expected to obtain in the absence of such restrictions, and to this end shall observe the following provisions :

(a) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article.

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

(c) Members shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d), require that import licenses or permits be utilized for the importation of the product concerned from a particular country or source.

(d) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Member countries having a substantial interest in supplying the product, shares based upon the proportions, supplied by such Member countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed, which would prevent any Member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

3. (a) In cases in which import licenses are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licenses granted over a past recent period and 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, the Member applying the restrictions shall give public notice of the total quantity or value of the product

or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry, Provided that they may be counted, so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods, and Provided further that if any Member customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this sub-paragraph.

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

4. With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) 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 applying the restriction, Provided that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization,

consult promptly with the other Member or the Organization regarding the need for an adjustment of the proportion determined or of the base period selected or for the re-appraisal of the special factors involved.

5. The provisions of this Article shall apply to any tariff quota established or maintained by any Member and, insofar as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or requirements under paragraphs 3 and 4 of Article 15.