

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.Chapter VIIInter-governmental Commodity arrangementsObservations and Proposals by the U.K. DelegationGeneral Observations

Since the London session of the Preparatory Committee there have been some important developments in the Commodity Policy field, both as regards the formation of Study Groups and as regards the calling of international commodity conferences. The United Kingdom and the other countries concerned have kept in mind the existing draft Chapter VII and it is in the light of their experience in recent months that the following suggestions for amendment of the draft are now put forward by the United Kingdom Delegation.

The amendments are designed rather to clarify the existing provisions than to modify their substance.

Before coming to the text of Chapter VII itself, it is necessary to point out that the provisions in Chapter V regarding the subject matter of Chapter VII are not satisfactory in their present form and it is suggested that a reference to Chapter VII should be inserted in Article 37 (the General Exceptions Article) in the following form :-

"(1) undertaken in pursuance of obligations under inter-governmental commodity arrangements concluded in accordance with the provisions of Chapter VII".

If this amendment were adopted, clause (d) in Article 25(2) should be omitted.

Arrangement of Chapter

It is suggested that the Chapter should be arranged in four Sections :-

Section A.	General Considerations	Articles 46-47
Section B.	Inter-governmental Commodity Arrangements in general	Articles 47A-51
Section C.	Inter-governmental Arrangements involving the Regulation of Production, Trade and Prices	Articles 52-56
Section D.	Miscellaneous Provisions	Articles 57-60

Article 47.

The mention of "arrangements" seems premature in this Article. The Drafting Committee made a change in the general arrangement of this Article which had the effect of subordinating the last five objectives to the first. This is more than a drafting amendment and the United Kingdom Delegation prefer the original form.

It is suggested that the title of the Article should be :  
"Objectives of Inter-governmental Action in regard to Primary Commodities" and that the Article should begin :-

"The Members recognise that inter-governmental action in regard to primary commodities may be required :-

- (a) to enable countries..... purposes of this Charter."
- (b) - (f), as in (a) - (e) of existing draft.

The U.K. Delegation do not support the addition to Article 47(c).

The U.K. Delegation propose the insertion of a new Article at this point.

Article 47A.

Procedure for Inter-governmental Action in regard to Primary Commodities

The Members agree to follow the procedure for dealing with the special difficulties referred to in Article 46 which is prescribed in Article 48 to 56 and in the first place to study any such difficulties in accordance with the provisions of Article 48.

The Members agree that if the study of a commodity in the production, consumption or trade of which they are substantially interested shows that the difficulties are unlikely to be overcome except by inter-governmental action, they will participate in an inter-governmental conference to be called in accordance with Article 49. Inter-governmental action may take two forms, arrangements not involving either regulation of the production, export or import of a commodity or regulation of prices, in which event the provisions of Article 51 apply, and agreements involving such regulation, in which event the provisions of Article 51 and also of Articles 52 and 53 apply.

Observations

Experience has shown that the Charter in its present form is rather difficult to understand; it is suggested that the addition of this Article after Article 47 would be helpful, as indicating the logical order of action to be followed when difficulties relating to primary commodities are encountered.

The following redraft is suggested for Articles 48 and 49.

Article 48.

Special Commodity Studies

1. (As in existing draft).
2. Unless it resolves that a prima facie case has not been established, the Organisation shall promptly invite all Members to appoint representatives to a Study Group to make a study of the commodity, if they consider that their interest in the production, consumption or trade of the commodity is sufficient to justify their participation in the Group. Non-Members may also be similarly invited.
3. The Study Group shall promptly investigate the special difficulties which are considered to exist or expected to arise regarding the commodity, and shall report to the Governments represented upon it whether they are so serious that they are unlikely to be overcome except by inter-governmental action. If it finds that this is the case, it shall recommend to the Governments concerned and the Organisation what form that inter-governmental action should take.

Article 49.

Commodity Conferences

1. If the Organisation receives recommendations for inter-governmental action from a Study Group, or if it receives other information agreed to be adequate by the Members substantially interested in the production, consumption and trade of a particular primary commodity of the existence of special difficulties which are so serious that they are unlikely to be overcome except by inter-governmental action, the Organisation shall promptly convene an inter-governmental conference for the purpose of discussing measures designed to meet the special difficulties which have been found to exist.
2. Every Member shall be entitled to attend such a conference, if it considers that its interest in the production, consumption or trade of the commodity concerned is sufficient to justify its attendance. Non-Members may be similarly invited.

Reasons for proposed re-draft.

1. Articles 48 (2) and 49 (2). Experience in connection with the preparation of invitations for the recent International Wheat Conference and for the forthcoming meeting of the enlarged Rubber Study Group showed that the inviting Governments did not feel that they themselves could determine what countries were sufficiently interested in wheat and rubber respectively to be entitled to an invitation. It is therefore considered that invitations should be issued on the widest possible basis, and that countries themselves should be left to determine whether they are sufficiently interested to attend.

2. Article 48 (3). Experience in the case of the Rubber and Tin Study Groups has shown that, even when there has been sufficient reason to foresee difficulties to justify the establishment of a Study Group, the Group, when it comes to study the matter, does not immediately find that those difficulties are so imminent that it is possible to determine their character and find the solution to them. For this purpose a fairly prolonged period of study is necessary. In these circumstances the present text is not realistic, and it is considered that, if, as must be assumed, all the Governments concerned are participating in the Study Group, they can safely be left to carry on the study in whatever way they find convenient, and that the matter need not be brought back to the Organisation until action under Article 49 is thought to be required. The tendency of the Charter should be to encourage the establishment of Study Groups even before they are strictly speaking required, rather than to discourage action until a crisis is imminent.

3. Article 49 (1). It is considered that the conditions precedent to the convening of a Commodity Conference are set out more clearly in the revised Draft than in the original. The conclusion that difficulties in regard to a particular commodity are so serious that they can be cured only by inter-governmental action is likely as a general rule to emerge from the discussions of a Study Group or may be reached by some other road; but it is unlikely that a Commodity Conference, if convened, will be a success unless there is pretty general agreement beforehand between the Governments concerned that inter-governmental action is required.

Article 50.

It is suggested that this Article should be redrafted as follows :- It is for consideration whether it should not be transferred to Section D of the Chapter, the relevant part of Article 54 being transferred to it.

1. The Organisation may request any competent inter-governmental organisation, such as the Food and Agriculture Organisation, to submit to it any relevant study of a primary commodity.

2. The Organisation, when it is convening a Commodity Conference under the provisions of Article 49 may request any inter-governmental organisation which it deems to be competent to be represented at the Conference, or to place expert staff and other assistance at its disposal, on such terms and conditions as may be agreed.

3. Any Study Group which is set up under the provisions of Article 48 may request any inter-governmental organisation which it deems to be competent to be represented at the Study Group and to place expert staff and other assistance at its disposal on such terms and conditions as may be agreed.

Reasons for proposed re-draft.

It is considered that the initiative in these matters should rest with the countries principally interested in particular commodities, operating through the Organisation in the first instance, and, after a Study Group has been set up, through the latter body.

Article 51 (a).

The question of subsequent accession to commodity agreements was discussed at some length at the recent International Wheat Conference, and the view was there strongly taken that only the countries already represented on the proposed International Wheat Council were in a position to judge what would be the appropriate terms for such subsequent accession. This view is likely to be shared by any other Commodity Conference; and it is therefore suggested that the last line of Article 51 (a) should be amended as follows :-

"and thereafter in accordance with such procedure and upon such terms as may be approved by the Organisation/the existing participants."

Article 53 (b).

It is suggested that a fair compromise between the two opinions represented by the present two alternative texts would be to borrow part of the wording of Article 1 of the draft Agreement which emerged from the International Wheat Conference:-

"The objectives of this Agreement are to assure supplies of wheat to importing countries and to assure markets to exporting countries at equitable and stable prices."

and to reword this paragraph as follows :-

"(b) such agreements shall be designed to assure the availability of supplies adequate at all times for world demand at equitable and stable prices."

Article 54 (3).

It is for consideration whether the right to appoint members from other inter-governmental organisations to Commodity Councils should be arrogated to itself by the Organisation; it is suggested that it would be more appropriate to give the right to the Commodity Councils themselves, since they will be in a better position than the Organisation to decide whether such participation would be useful, and on what conditions it should be invited.

It is therefore suggested that the paragraph should be reworded as follows :-

"The Organisation may appoint a non-voting representative to each Commodity Council. Each Commodity Council may invite any competent inter-governmental organisation to nominate a non-voting representative to participate in its work on such terms and conditions as may be agreed."

Article 56.

In the light of discussions during the recent International Wheat Conference it is probable that regulatory agreements will contain much about the settlement of disputes; and in general it seems essential that the individual Commodity Council should be free to try to resolve all differences under its own arrangements. There may well be cases, however, where the Council is unable to resolve differences and some provision is needed in Chapter VII to cover such cases. It is perhaps useful to quote here the relevant paragraph (Article XVI (3)) in the draft Wheat Agreement which, it will be observed, does not provide any right of appeal:-

"Any dispute arising out of the interpretation of this Agreement or regarding an alleged breach of its provisions, shall be referred to the Council. The Council may appoint a committee to ascertain and report on the facts of such a dispute. The Council shall on the evidence before it, including the findings of any committee so appointed, give a ruling on the dispute, but no contracting Government shall be found to have committed a breach of this Agreement except by a majority of two-thirds of the votes held by the exporting countries and of two-thirds of the votes held by the importing countries."

The one kind of dispute for which some outside tribunal is likely to be desired by both importers and exporters is a dispute between the two sides of the Council, but both sides will, no doubt, be anxious to ensure that any other body to which the dispute is referred has a similar kind of balance between importer and exporter interests.

It is suggested that the following amendment would clarify the position:-

"Any question or difference concerning the interpretation of the provisions of a regulatory agreement or arising out of its operation shall be discussed originally by the Commodity Council. If the question or difference cannot be resolved by the Council under the terms of the agreement it shall be referred by the Council to the Commodity Commission for examination and recommendation to the Executive Board. The Executive Board shall then issue a ruling in pursuance of the provisions of Article 36."