

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

Draft Charter

Chapter VII

The Delegation of the United States of America submits the following proposals for amendment of Chapter VII of the Draft Charter:

Chapter VII

INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS

Section A - Inter-governmental commodity arrangements in general.

Article 46

Difficulties relating to primary commodities

The Members recognize that the conditions under which some relationship between production and consumption of some primary commodities are produced, exchanged and consumed are such that international trade in these commodities may be affected by may present special difficulties, [.] such as the persistence of These special difficulties are different in character from those which manufactured goods present generally. They arise out of such conditions as the disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuations in prices, [.] which do not characterize the trade in manufactured goods, and that such difficulties may have They may have serious adverse effects on the interests of producers and consumers, as well as widespread repercussions that would jeopardize the general policy jeopardizing general policies of economic expansion. They agree that such difficulties may, at times, necessitate exceptional treatment of the international trade in such commodities and that such treatment may be provided through inter-governmental commodity arrangements concluded in conformity with the provisions of this Chapter.

Comment: The proposed changes are primarily editorial. It is thought that they somewhat clarify the statement. The words "international trade" are added to make clear that the special difficulties envisaged affect such trade. Some of the thought of the introductory lines of Article 47 is brought forward to the last sentence of this Article.

Article 47

Objectives of inter-governmental commodity arrangements

Inter-governmental commodity arrangements may be employed to achieve enable countries to overcome the special difficulties referred to in Article 46 without resorting to action inconsistent with the purposes of this Charter, by achieving the following objectives:

Comment: The simpler form is made possible in view of the revisions proposed for Article 46.

(a)

(b)

(c) to moderate pronounced fluctuations in the price of a primary commodity above and below a the level which is remunerative to efficient producers and fair to consumers and which approaches which expresses the long-term equilibrium between the forces of supply and demand in order to achieve a reasonable degree of stability on the basis of remunerative prices to efficient producers without unfairness to consumers;

Comment: Since the words bracketed in the New York Draft of this subparagraph were supported by a number of delegations, the U.S. delegation withdraws its objections and proposes the editorial changes indicated.

(d)

(e) to provide for expansion in the production of a primary commodity which is in such short supply as seriously to prejudice the interests of consumers.

Comment: Since Article 59 exempts from Chapter VII arrangements relating to the equitable distribution of commodities in short supply, an objective related to such an arrangement does not appropriately belong in Article 47.

Article 48
Special commodity studies

1. Any Member substantially interested in the production or consumption of, or trade in, a particular primary commodity shall be entitled, if it considers that international trade in the commodity is, or is likely to be, affected by special difficulties of the type referred to in Article 46, [exist or are expected to arise regarding the commodity,] to ask that a study of the [that] commodity be made.

2.

3.

Comment: This change is consequent upon the change proposed for Article 46. It is not intended to affect the substance of the paragraph.

Article 49
Commodity Conferences

Comment: The word at the end of the third line should be "problem", not "problems", as in paragraph 3 of the preceding Article.

Article 50

Article 51

General principles of inter-governmental commodity arrangements

Members undertake to adhere to the following principles governing the operation of all types of inter-governmental commodity arrangements:

(a)

(b)

(c) under such arrangements participating countries shall arrange for equitable treatment as between non-participating Members and participating countries [affording advantages commensurate with obligations accepted by non-participating Members];

Comment: The clause proposed for deletion does not alter the sense of the preceding material. Its inclusion may, therefore, lead to confusion.

SECTION B. INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS
INVOLVING THE REGULATION OF PRODUCTION,
TRADE OR PRICES.

Article 52

Circumstances governing the use of regulatory agreements

1. Members agree that regulatory agreements may be employed only when it is determined that:

(a) a burdensome surplus of a primary commodity has developed or is expected to develop, which, in the absence of specific governmental action, would cause serious hardship to producers, among whom are small producers who account for a substantial portion of the total output, and these conditions could not ~~[cannot]~~ be corrected by normal market forces ~~[alone]~~ in time to prevent such hardship ~~[,]~~ because characteristically, in the case of the primary commodity concerned, a substantial reduction in price does not readily lead to a significant increase in consumption nor to a significant decrease in production; or

(b) widespread unemployment or under-employment in connection with a primary commodity, arising out of difficulties of the kind referred to in Article 46, has developed or is expected to develop, which, in the absence of specific governmental action, would not be corrected by normal market forces ~~[alone]~~ in time to prevent widespread and undue hardship to workers, because characteristically, in the case of the industry concerned, a substantial reduction in price does not readily lead to a significant increase in consumption but to the reduction of employment and because areas in which the commodity is produced in substantial quantity do not afford alternative employment opportunities for the workers involved; or

Comment: The tense of the verb in subparagraph (a) should, as in the London draft, indicate that it refers to what market forces could do if the surplus were to develop, not what they can do when it has developed.

The phrase "in the absence of specific governmental action" was removed by the Interim Drafting Committee from sub-paragraphs (a) and (b). Presumably this deletion was made on the assumption that the word "alone" takes care of the matter in each case. Since the deleted phrase has an important specific meaning, it is thought that the text will be clearer if the phrase is restored and "alone" is deleted instead.

(c) the Organization finds that, for a commodity other than a primary commodity, in addition to the circumstances set forth in either (a) or (b) above, exceptional circumstances justify such action. Agreements under this sub-paragraph shall be governed not only by the principles set forth in this Chapter but also by any other requirements which the Organization may establish⁷.

Comment: An important purpose of sub-paragraph (c) in the London draft was to make appropriate provision for competing synthetic products which it might be necessary to incorporate in a primary-product regulatory agreement. This purpose is now served more effectively by the modification, made by the Interim Drafting Committee, of the definition of a primary commodity in Article 60, paragraph 1. Should unforeseen circumstances make it desirable to complete some other type of non-primary commodity agreement, it could be dealt with under the terms of Article 66, paragraph 3.

2. Determinations under this Article shall be made through the Organization by consultation among the Members substantially interested in the commodity concerned.

Comment: This proposal would incorporate in Article 52 the provisions of Article 66, paragraph 4. This eliminates a concealed cross reference that has led to some confusion in interpreting Article 52.

Article 53

Additional principles governing regulatory
agreements

Members shall undertake to adhere to the following principles governing regulatory agreements in addition to those stated in Article 51:

(a) Members agree not to enter into any new regulatory agreement unless it has been recommended by a conference called in accordance with Article 49. Nevertheless, Members substantially interested in the production or consumption of, or trade in, a particular commodity may proceed by direct negotiation to the conclusion of an agreement, provided that it conforms to the other provisions of this Chapter, if there has been unreasonable delay in the proceedings of the Study Group or of the Commodity Conference;

Comment: It is thought that sub-paragraph (a) does not express a basic principle in the same sense as do the other sub-paragraphs in Article 53.

(b) Such agreements shall be designed to assure availability of supplies adequate at all times for world demand at reasonable and stable prices remunerative to efficient producers;

Comment: The material within the outside brackets is not germane to the principle expressed in the preceding material.

(c) under such agreements participating countries which are largely interested in dependent for consumption on imports of the commodity involved shall, in determinations made relating to substantive matters, have together a voice equal to that of those countries largely interested in obtaining exports of markets for the commodity provided that any country which is largely interested in the commodity but which does not fall precisely under either of the above categories, shall, according to its interests in the circumstances, have an appropriate voice within one or the other category without altering the equality between the two;

Comment: The equality of export and import voices is the basic principle. By stating the categories more simply than in earlier drafts, one can avoid the difficulty which gave rise to the proviso. In practice, votes are apportioned through a negotiating process, and there must be a good deal of latitude in the allocation of voting power within each of the two equal groups.

(d)

(e) participating countries shall formulate and adopt [a programme] programs of domestic economic adjustment believed to be adequate to insure substantial progress toward solution of the commodity problem within the time limits of the agreement.

Comment: This change is suggested in order to avoid any implication that domestic economic adjustment might be required by the terms of this sub-paragraph to be carried out through an internationally administered program.

In connection with this sub-paragraph the Interim Drafting Committee noted: It was felt that the phrase "substantial progress toward solution of the problem" covered cases where the agreement impeded a deterioration of the situation. It is proposed that this note be incorporated as a footnote to the draft prepared by the Preparatory Committee.

Article 54

Administration of regulatory agreements

2. Each of the countries participating in an agreement shall be entitled to have one representative on the Commodity Council. These representatives alone shall have the right to vote. Their voting power shall be determined in such a way as to conform with the provisions of sub-paragraph (c) of Article 53.

Comment: The suggested addition was deleted in the report of the Interim Drafting Committee apparently by mistake since it appears to change the sense in a way which is not reasonable.

Article 55

Article 56

Article 57

Article 58

General undertaking by Members

[Members, including Members not parties to a particular commodity arrangement, shall give the most favourable possible consideration to any recommendation by a Commodity Council for expanding consumption of the commodity in question.]

Comment: It is thought that this Article adds nothing to the Charter and, therefore, may give rise to confusion in interpretation. Members explicitly undertake, in paragraph 1 (b) of Article 1, to work for the expansion of the consumption of goods.

Article 59

Exceptions to provisions relating to inter-governmental commodity arrangements

The provisions of Chapter VII shall not apply:

(a)

(b) to international fisheries or wildlife conservation agreements with the sole objective of conserving and developing these resources or to agreements relating to the purchase and sale of a commodity falling under Section E of Chapter V; provided, that such agreements are not used to accomplish results inconsistent with the objectives of Chapter VI or Chapter VII; and

Comment: The proviso proposed is the same as that applied to the exceptions in subparagraph (a) of this Article. It is thought that the London Committee did not mean to exempt fisheries agreements from this proviso.

[c) to arrangements relating to fissionable materials, to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment, or, in the time of war or other emergency in international relations to the protection of the essential security interests

of a Member.]

Comment: Paragraph (c) will no longer be necessary in the light of proposed amendments which apply these exceptions to the entire Charter.

Article 60

Definitions

1. For the purposes of this Chapter, the term "primary commodity" means any product of farm, forest or fishery, or any mineral, which enters world trade in substantial volume in a form customarily called primary, and may include such a product on which minor processing has been performed in preparation for export. The term may also cover a group of commodities, of which one is a primary commodity as defined above and the others are commodities (whether primary or non-primary) which are so closely related to the other commodities in the group [that they can conveniently be dealt with in a single arrangement] that it is necessary to deal with them in a single arrangement.

2.

Comment: It is thought that the words, "it is necessary to deal with them" convey more accurately the intention of the London Committee than the words, "they can conveniently be dealt with".

ANNEX

Memorandum by the United States Delegation regarding the status under Chapter VII of Agreements for the conservation of exhaustible natural resources.

In the New York Draft Charter, Article 47 provides that inter-governmental commodity arrangements may be employed to achieve the following objective:

"To maintain and develop the natural resources of the world and protect them from unnecessary exhaustion."

An agreement for such a purpose would, by the nature of the problem, usually have to be a regulatory, and indeed a restrictive, agreement under the terms of Chapter VII. As a regulatory agreement, it would be required to meet the conditions of Article 52. It is unlikely that a situation calling for an agreement to prevent the exhaustion of a natural resource could meet the formula of Article 52.

On the other hand, there is need for the elaboration of criteria, procedures, and principles to assure that a conservation agreement shall be not more restrictive than may be necessary to assure the conservation objective.

The United States Delegation suggests that this problem might possibly be met by the inclusion of a short section in Chapter VII between the present Section B and Section C. It is thought that the Preparatory Committee may not be prepared at this session to work through this entire problem, including the elaboration of procedures and criteria. The Committee might, however, wish to have a section drafted to deal with the matter provisionally and to charge the International Trade Organization with working out definitive procedures, principles, and criteria.