

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.DRAFT CHARTERArticle 26

The Australian Delegation submits the following proposals for amendment of Article 26.

Paragraph 1. Second Sentence:

"..... Accordingly, notwithstanding the provisions of Article 25, any Member, in order to safeguard its external financial position and balance of payments, 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."

Paragraph 2(a). Second Sentence:

"..... In determining the extent and severity of restrictions, due regard should be paid in each case to any special factors which may be affecting the level of the Member's reserves, 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."

COMMENT:

The existing wording of paragraph 1 provides that import restrictions may be imposed "insofar as this is necessary" to safeguard the Member's position. Paragraph 2 sets out the requirements limiting the application and the extent of the restrictions, according to the circumstances of the Member. The words quoted from paragraph 1 presumably were not intended to have force in themselves, since paragraph 2 covers the same point in greater detail. There may possibly be some risk, however, that they could be interpreted to mean that import restrictions were not "necessary" (and therefore were not permitted) until every other possible corrective measure (such as exchange control, exchange depreciation, etc.) had been tried and found inadequate.

The change proposed in paragraph 2 (a) is similarly designed to remove the possible interpretation that restrictions could be disallowed on the ground that, for example, the Member's currency was thought to be over-valued, and this constituted a "special factor" affecting the level of its reserves.

It remains clear, of course, that the Organization has the right, during the course of consultation with the Member under paragraphs 3 (a) or 3 (b), fully to discuss and recommend alternative action which the Member might take to meet its difficulties.

Paragraph 2(c):

"As far as is reasonably practicable, the Members shall not apply the restrictions in such a manner as to exclude completely imports of any product /class of goods/."

Comment:

The purpose of this sub-paragraph was primarily to avoid unnecessary damage to the commercial interests of other Members, by ensuring that goods should not be excluded completely from an accustomed market. It is suggested, however, that for administrative reasons some flexibility should be allowed.

The word "product" is suggested instead of "class of goods", because the latter phrase has a very wide meaning in most customs classifications.

Paragraph 3 (c): Final Sentence:

"..... To the extent to which such approval has been given, the provisions of sub-paragraph (a) of this paragraph shall not apply, and 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 of this Article."

Comment:

If a Member has obtained the prior approval of the Organization for restrictions, after consultation in terms of paragraph 3 (c), it seems unnecessary and undesirable that the Member should be required to consult again before actually introducing restrictions. It may be noted that paragraph 3(b) gives the Organization the right to consult at any time with any Member which is in fact applying restrictions.

Paragraph 4:

"In giving effect to the restrictions on imports under this Article. A Member applying import restrictions in accordance with paragraphs 1 and 2 of this Article may restrict imports of products according to their relative essentiality determine the scope, severity and incidence of the restrictions, in relation to imports of different products or classes of products, in such a way as to give priority to the importation of those products which are more essential in the light of required by its domestic employment, reconstruction, development or social policies and programmes. In so doing, the Member shall take account of the effects of its restrictions on the economies of other Members, and shall seek to avoid all unnecessary damage to the commercial their interests of other Members.

Comment:

This re-wording is intended to clarify the meaning and purpose of the paragraph.

21st June, 1947.