

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.REPORT OF SUB-COMMITTEE ON CHAPTER VII.

1. This Report and the accompanying draft Text of Chapter VII have been unanimously adopted by the Sub-Committee for submission to Commission B.
2. The Sub-Committee consisting of representatives of the following Delegations was appointed by Commission B: Australia, Canada, Cuba, Czechoslovakia, France, Netherlands, United Kingdom, United States of America, to prepare new texts of all the Articles except Articles 57 and 58 (in the New York text) and to prepare a detailed re-arrangement of the Chapter as a whole.
3. Mr. D. CAPLAN (United Kingdom) was elected Chairman of the Sub-Committee.
4. The Sub-Committee has held 17 sessions and there have been informal meetings of members to assist in the reconciliation of alternative texts. By invitation of the Sub-Committee, and in accordance with the arrangements made in Commission B, countries not represented on the Sub-Committee have participated in its discussions on questions of special concern to them.
5. It has been necessary for the Sub-Committee to consider the question of relations with other inter-governmental organizations before this question has been discussed in the consideration of Chapter VIII, in particular of Article 81 (2).
6. It has been possible to obtain unanimous agreement on all the points remitted for study to the Sub-Committee, thanks to the willingness of all members to do everything possible to reconcile their different approaches to these matters.
7. The text of Chapter VII as agreed by the Sub-Committee is attached as an Annex to this Report.
8. All delegations have received the working papers and summary records of the Sub-Committee. The Sub-Committee, however, considers it desirable to record briefly the discussion about the principal points of substance on which agreed texts were finally adopted. These are taken in the order agreed for the new text. For ease of reference, the numbers of the Articles in the New York text are shown in brackets.
9. The Sub-Committee wishes to record its warm appreciation of the services of the Secretariat which has worked untiringly and, to judge from the records of the Sub-Committee, incessantly. The strain of having to cover so much ground in such a short span of time has been considerable in the case of delegates; in the case of the Secretariat it has indeed been formidable.

ARRANGEMENT

The Sub-Committee gave careful consideration to the arrangement of the Chapter in view of the importance of securing

as lucid and logical a presentation as possible, and bearing in mind the fact that the subject matter of the Chapter is of direct interest to an exceptionally wide public. In particular, it is thought advisable to specify at the outset the commodities with which the Chapter deals (new Article 47). In the light of the new text, the Sub-Committee considers it necessary, in its arrangement of the Chapter, to revert to four Sections as follows (Article numbers refer to the new text):

SECTION A - General Considerations. (Articles 46-49).

SECTION B - Inter-governmental Commodity Agreements in General (Articles 50-53).

SECTION C - Inter-governmental Commodity Control Agreements (Articles 54-58).

SECTION D - Miscellaneous Provisions (Articles 59-62).

#### FOOTNOTES TO NEW YORK TEXT

All footnotes to the New York text have been taken into consideration by the Sub-Committee, and have proved of value in its discussions. If not shown in the new text, they are to be regarded as having lapsed.

#### ARTICLE 46 (46)

The new Article (47) on Primary and Related Commodities is so worded as to permit an unqualified reference in Article 46 to special difficulties "which do not characterize the trade in manufactured goods."

The substance of part of the preamble to Article 48 (N.Y.47) has been incorporated at the end of Article 46. It was agreed to insert an explanatory footnote to this Article to the effect that "special treatment of the international trade in such commodities" may involve simultaneous action affecting production, trade and consumption.

#### ARTICLE 47 (60 (1)) - Primary and Related Commodities.

Considerable discussion took place regarding the extent of the application of Chapter VII to non-primary commodities. Fears were expressed that, under the provisions of the New York text, it might prove easier to make an agreement for a non-primary than for a primary commodity. There was general agreement that Chapter VII should not exclude the possibility, in exceptional circumstances, of commodity agreements relating to non-primary commodities: these, however, should be subject to at least as stringent conditions as for primary products. There was support for a proposal to include a special Article dealing with inter-governmental agreements relating to non-primary commodities, but it was finally agreed that the problem could best be met by slightly amending the definition of primary commodity (New York text, 60 (1)), and including it in a broader Article dealing with all types of commodities to which inter-governmental agreements might be applied. This is the new Article 47 "Primary and Related Commodities". This provides that, in exceptional circumstances, and subject to any additional requirements which the Organization may lay down, Chapter VII may be applied to commodities which do not fall "precisely" under the stated categories. By the use of the term "precisely", it is intended to imply a fairly close relationship and therefore to exclude highly manufactured goods.

The inclusion of this new Article makes possible the deletion

of sub-paragraph (c) of Article 52 of the New York text, which dealt with regulatory agreements for non-primary commodities.

ARTICLE 48 (47)

In sub-paragraph (c), it was agreed that the two concepts of "prices fair to consumers and remunerative to efficient producers" and prices expressing "the long-term equilibrium between the forces of supply and demand" should be included, without implying a direct relationship. The substance of the words shown in square brackets in the New York text has been included in the new text.

In sub-paragraph (e) the text is now designed to cover expansionist agreements, where a commodity is not necessarily in actual short supply. The question was specifically raised whether inter-governmental commodity agreements approved by the Food and Agriculture Organization for the distribution of basic foods at special prices, were permitted under the Charter. The Sub-Committee considered that such agreements were permitted under the Charter and that the new text of paragraph (e) of Article 48 (N.Y.47) covered them.

Sub-paragraph (f) has been added to make it clear that, although agreements relating solely to equitable distribution are excluded (under Article 62) from some of the provisions of Chapter VII, agreements which include equitable distribution as one of their objectives are covered by the Chapter.

ARTICLE 49 (58)

This Article has been moved from the "Miscellaneous Provisions" section, as it was felt that it would be more appropriate to include it under "General Considerations". It was not referred to the Sub-Committee by Commission B, and no change has been made in the text except to replace the word "arrangement" by "agreement" in conformity with the new terminology. \*

ARTICLE 50 (48)

In paragraph 2, the principle is accepted that it is up to Members themselves to decide whether or not they have a sufficiently substantial interest in a commodity to attend a Study Group. (The same principle is accepted in relation to Commodity Conferences. See Article 51 (2)). The effect of accepting this principle is to open Study Groups and Commodity Conferences to all Members who wish to participate.

ARTICLE 51 (49)

On paragraph 1, there was some discussion on the number of Members who might reasonably request the Organization to call a Commodity Conference. It was finally agreed, in effect, that the Organization should call a Conference at the request of two or more Members whose interest in a commodity represents a substantial part of world production, consumption or trade.

In paragraph 2 the principle is accepted that Members shall decide for themselves whether or not their interest in a

\* This change has been made throughout the Chapter subject to the approval of the Legal Drafting Committee.

commodity is substantial enough to justify their participation in a Commodity Conference.

ARTICLE 52 (51).

It is to be noted that sub-paragraphs (a) to (d) inclusive raise questions on relations with non-Members which will also be the subject of the as yet non-existent Article 36.

On sub-paragraph (a) it was agreed to make it explicit that terms of subsequent accession to and participation in an agreement should normally be decided by the existing participants, and to leave with the Organization the power of final approval.

Sub-paragraphs (c) and (d) of the New York text have been combined in a single paragraph (c) in order to achieve greater clarity. The words "due consideration...under the agreement", are intended to have the effect that, in the treatment of countries not participating in an agreement, consideration shall be given to the policies which they adopt in relation to the agreement.

ARTICLE 53 (60 (3)) - TYPES OF AGREEMENTS

(a) The New York definition remained the same as the London text. It was a rigid definition for, whatever the purpose of a particular commodity agreement, any regulation of production, export or import or of prices made that agreement "regulatory" so that it could only be employed within the narrow limits permitted by Article 52 (N.Y. text). In the light of the relationship of Chapter VII to the rest of the Draft Charter, in particular to Chapter V, it was felt that these precise definitions were justified.

(b) The Sub-Committee feels, however, that the use of the machinery of regulation of production or trade need not always be such as to reduce or limit production or trade. The conditions of supply and demand of particular primary commodities might well be such that inter-governmental commodity agreements would be needed to facilitate a long-term programme of expansion of production. For the successful operation of such agreements it might well be necessary to have a programme of regulated production. In this event, the operation of such regulatory machinery would in no way be inconsistent with the fundamental aims and aspirations of the Draft Charter.

(c) Other cases which seemed to call for a more flexible definition of "regulatory" were the agreements relating to seasonal movements of trade, many of them arising out of the particular geographical conditions of production in the Northern and Southern hemispheres -- agreements regulating seasonal exports and imports but not regulating the total volume of trade in the commodity over the year as a whole.

(d) Discussion in Commission B revealed a clear desire for a new definition of "regulatory agreements". The Sub-Committee therefore attempted to draft a new definition which would enable agreements, covering the circumstances outlined in paragraphs (b) and (c) above, to be concluded outside the rigid bounds of Article 54 (N.Y.52) of Chapter VII. The general desire was to avoid so loosening the existing definition that commodity agreements which would operate to reduce or limit production or trade, would be permitted without the appropriate safeguards laid down in Section "C" (i.e. Section B of the New York text).

(e) In particular, it was felt that regulation of prices should not be permitted without these safeguards but the Sub-Committee recognized that agreements with the purpose of securing an expansion of production might require provision for the application of minimum prices as an assurance to producers against the possibility of a subsequent alteration in the relationship between supply and demand leading to a severe depression of prices.

(f) In the event, the Sub-Committee has found it impossible to arrive at a definition which would be automatic in its application, and has concluded that the Organization will itself have to make determinations on the basis of criteria to be set out in a new definition of "regulatory agreements". In view of this new definition, the Sub-Committee has decided to introduce the new title of "commodity control" agreements. The text of Article 53 in the Annex represents, in the Sub-Committee's opinion, the most practical solution of the problem of having too rigid or too loose a definition, and the Sub-Committee is satisfied that this definition would enable agreements covering the circumstances described in paragraphs (b) and (c) above to be employed outside the strict limits set by Article 54. (N.Y.52)

(g) The Sub-Committee feels that the only satisfactory method of dealing with the question of price regulation discussed in paragraph (e) above, would be to provide for the use of minimum prices in expansion of production agreements through determination by the Organization that the circumstances justify such action.

(h) To sum up; paragraph 1 of Article 53 states that there are two classes of intergovernmental commodity agreements: (i) commodity control agreements and (ii) agreements other than commodity control agreements. Paragraph 2 defines a commodity control agreement. Paragraph 3 provides that, on request by a Member, Study Group or Commodity Conference, the Organization shall determine whether an existing or proposed agreement is or is not a commodity control agreement within the terms of paragraph 2. Paragraph 4 states which provisions of Chapter VII shall apply to the two classes of agreement; it leaves the Organization to stipulate, however, which, if any, of the provisions of Section C shall apply to agreements which it has determined are not commodity control agreements within the terms of paragraph 2, although they involve regulation of production or quantitative control of exports or imports. Paragraph 5 covers the special case of those expansionist agreements which provide for the future application of minimum prices. Although such agreements thus "involve the regulation of prices", the Organization may find that they are not

commodity control agreements, and therefore not subject to the provisions of Section C., pending the operation of their price provisions. As soon as the latter provisions become operative, therefore, such agreements will then be commodity control agreements.

ARTICLE 54(52).

There was considerable discussion on whether to include in this Article a new sub-paragraph dealing with expansionist agreements. This point was met by the narrowing of the definition of a regulatory agreement (see note on Article 53). The Observer of the Food and Agriculture Organization expressed his complete satisfaction with this method of dealing with the question, and withdrew the F.A.O. amendment to the Article. (See D.C. Report, footnote, page 41). The new definition has also made possible the deletion of sub-paragraph (c).

A new paragraph (2) has been inserted regarding determinations under the Article. This obviates the existing reference to such determinations under Article 54 (N.Y.52) contained in Article 66 (4). The attention of Commission B, which is dealing with Chapter VIII, will be drawn to this point.

In regard to sub-paragraphs (a) and (b), the New York text contained a footnote on the interpretation of the phrase "because characteristically". The Sub-Committee considered that this note was unnecessary.

ARTICLE 55(53)

In sub-paragraph (b) it was agreed to exclude the words shown in square brackets in the New York text in view of the new text of Article 48 (c) (N.Y.47 (c)). It is recognised that the term "reasonable" as applying to prices in sub-paragraph (b) is to be interpreted as in Article 48(c).

With regard to sub-paragraph (c) of the New York text, it was agreed to revert to the London text of Article 51 (4), subject to minor drafting changes. This was felt to leave greater scope to each Commodity Conference to arrive at satisfactory arrangements on voting. It is understood:

- (i) that there shall be no more than two groups of countries within an agreement, and that the principle of "equal voice" in substantive matters shall apply as between them;
- (ii) that countries which are large producers and consumers of the commodity concerned, but which are not large exporters or importers shall have an appropriate voice; and
- (iii) that any difference on voting arrangements may naturally be the subject of an appeal to the Organization under the relevant provisions of Chapter VIII. (Article 86 (2)).

In sub-paragraph (d) the text has been rearranged and the term "national consumption and world market requirements" substituted for the term "world requirements". This was to meet the concern of one delegation in particular lest the New York text might have been interpreted in such a way as to interfere with the expansion of production to meet increasing internal demand.

Sub-paragraph (e) has been redrafted so as to exclude the possible interpretation that solution of the problem must be secured within the time limits of the agreement.

ARTICLE 56 (54)

In paragraph (6), the word "Charter" has been altered to "Chapter", correcting what is assumed to be a mis-print in the New York text.

On paragraph (7) it was suggested that the Commodity Council's reports to the Organisation should also be sent to inter-governmental organisations with a special interest in the commodity. It was decided not to make any specific reference, it being recognised that in most cases these organisations would have non-voting representatives on the Commodity Council. They would, therefore, normally receive reports automatically.

Paragraph (9) has been inserted regarding the disposal of archives on the termination of an agreement. This has been transferred from Article 57 (N.Y.55) where its inclusion was regarded as inappropriate.

ARTICLE 57 (55)

This has been divided into three paragraphs and re-arranged in order to obtain greater clarity and a more logical arrangement. The final sentence of the New York text has been moved to Article 56, as mentioned above.

ARTICLE 58 (56)

This has been slightly amended in order to make it clear that it is the Commodity Council which shall refer its differences to the Commodity Commission after seeking to resolve them under the terms of the agreement.

ARTICLE 59 (50)

Discussion in Commission B of the various amendments proposed about relations with inter-governmental organisations showed that there was substantial agreement that provision should be made in the field of commodity agreements for very close co-operation between the Organisation and other competent inter-governmental organisations.

The Sub-Committee agreed that Article 50 of the New York text was not sufficiently comprehensive, taking into account the various stages of discussion and study before the consideration of agreements.

With these considerations in view, the Sub-Committee has redrafted this Article so that the rights of competent organisations are made quite clear and the area of co-operation defined so far as this can be done in advance of the negotiation of "Relationship Agreements" as provided for in Chapter VIII. (See Verbatim Report of Commission B., pages 42-44, E/PC/T/B/PV/7). It has also moved the whole Article to the Miscellaneous Provisions Section where it is thought to be more appropriate.

In this connection, the Sub-Committee decided that it would be appropriate to maintain, in Article 56, paragraph (3) which deals with representation of competent inter-governmental organisations on Commodity Councils.

ARTICLE 60 (57)

This Article was not referred to the Sub-Committee by Commission B.

ARTICLE 61 (60 (2)) - Territorial Application.

Since the substance of paragraphs 1 and 3 of Article 60 of the New York text has been moved to other parts of the Chapter, paragraph 2 becomes a separate Article.

ARTICLE 62 (59)

The new text of this Article is designed to graduate the extent to which certain types of agreement are to be excepted from the provisions of Chapter VII. Bilateral state trading agreements are still entirely excluded from the application of the Chapter. Other types of bilateral agreement may, however, in certain circumstances, be made subject to such provisions of the Chapter as the Organisation may stipulate. Agreements relating solely to the equitable distribution of commodities in short supply are to be subject to the General Principles of inter-governmental Commodity Agreements (Article 53, new text). Commodity control agreements relating solely to the conservation of fisheries or wild life or other exhaustible natural resources are not to be subject to the provisions of Section C of the Chapter.

MISCELLANEOUS POINTS ARISING IN CONNECTION WITH OTHER CHAPTERS

In the light of the new Article (53) on Types of Agreements and the new text of the Exceptions Article (62), the Sub-Committee recommends:

- (i) acceptance of the proposal that agreements falling under Chapter VII should be classed as an exception to Chapter V (Article 37. See E/PC/T/W/157/Rev.1. page 2), with the consequential deletion of sub-paragraph (d) of paragraph 2 of Article 25.
- (ii) deletion of sub-paragraph (b) of paragraph 1 of Article 45

Pursuant to its decisions to bring conservation agreements partly within the provisions of Chapter VII (see Article 62), the Sub-Committee further recommends acceptance of the proposal made to the Working Party on Technical Articles (E/PC/T/103. page 47) to delete, in sub-paragraph (j) of Article 37, the words "are taken pursuant to international agreements or".

A N N E X

CHAPTER VII

INTER-GOVERNMENTAL COMMODITY AGREEMENTS

SECTION A - GENERAL CONSIDERATIONS

ARTICLE 46 (46) \*

DIFFICULTIES RELATING TO PRIMARY COMMODITIES

The Members recognize that the conditions under which some primary commodities are produced, exchanged and consumed are such that international trade in these commodities may be affected by special difficulties which do not characterize the trade in manufactured goods. Among these special difficulties is the tendency towards persistent disequilibrium between production and consumption, as shown in the accumulation of burdensome stocks or pronounced fluctuations in prices. They may have serious adverse effects on the interests of producers and consumers, as well as widespread repercussions jeopardizing the general policy of economic expansion. Members agree that such difficulties may, at times, necessitate special treatment of the international trade\*\* in such commodities through inter-governmental agreement.\*\*\*

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\* Numbers in brackets indicate equivalent Article in New York text.

\*\* In Article 46, in speaking of the need to adopt "special treatment of the international trade in such commodities", the Sub-Committee had in mind merely that international trade is the aspect of a particular commodity problem directly appropriate for international treatment. It was understood, however, that agreement regarding the treatment of the international trade in a commodity might involve agreement regarding production or consumption of the commodity.

\*\*\* Throughout this text, the word "arrangement" has been replaced by "agreement". This change is subject to the approval of the Legal Drafting Committee. It is understood that all forms of inter-governmental agreement, accord, etc. are intended to be covered by the one term "agreement".

ARTICLE 47 (60(1))

PRIMARY AND RELATED COMMODITIES

1. For the purposes of this Chapter, the term "primary commodity" means any product of farm, forest or fishery or any mineral, in its natural form or subjected to such processing as is customarily required to prepare it for marketing in substantial volume in international trade.
2. The term shall also cover a group of commodities, of which one is a primary commodity as defined in paragraph 1 and the others are commodities (whether primary or non-primary) which are so closely related, as regards conditions of production or utilisation, to the other commodities in the group, that it is appropriate to deal with them in a single agreement.
3. If, in exceptional circumstances, the Organization finds that the conditions set forth in Article 54 exist in the case of a commodity which does not fall precisely under paragraphs 1 or 2 above, the Organization may determine that the principles and provisions of Chapter VII, together with any other requirements it may establish, shall apply to inter-governmental agreements regarding that commodity.

ARTICLE 48 (47)

OBJECTIVES OF INTER-GOVERNMENTAL COMMODITY AGREEMENTS

The Members recognize that inter-governmental commodity agreements may be employed to achieve the following objectives:

- (a) to prevent or alleviate the serious economic problems which may arise when adjustments between production and consumption cannot be effected by normal market forces alone as rapidly as the circumstances require;
- (b) to provide, during the period which may be necessary, a framework for the consideration and development of measures which have as their purpose economic adjustments designed to promote the expansion of consumption or a shift of resources and manpower out of over-expanded industries into new and productive occupations;
- (c) to moderate pronounced fluctuations in the price of a primary commodity with a view to achieving a reasonable degree of stability on a basis of prices fair to consumers and remunerative to efficient producers, having regard to the desirability of securing long-term equilibrium between the forces of supply and demand;

- (d) to maintain and develop the natural resources of the world and protect them from unnecessary exhaustion;
- (e) to provide for the expansion of the production of a primary commodity where this can be accomplished with advantage to consumers and producers;
- (f) to assure the equitable distribution of a primary commodity in short supply.

ARTICLE 49\* (58)

GENERAL UNDERTAKING BY MEMBERS

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

SECTION B - INTER-GOVERNMENTAL COMMODITY AGREEMENTS IN GENERAL

ARTICLE 50 (48)

SPECIAL COMMODITY STUDIES

1. Any Member which is substantially interested in the production or consumption of, or trade in, a particular primary commodity, and which considers that international trade in that commodity is, or is likely to be, affected by special difficulties, shall be entitled to ask that a study of the commodity be made.

2. Unless it resolves that a prima facie case has not been established, the Organization shall promptly invite all Members to appoint representatives to a Study Group to make a study of the commodity, if they consider that they have a substantial interest in the production or consumption of, or trade in, the commodity. Non-Members may also be invited.

3. The Study Group shall promptly investigate the production, consumption and trade situation in regard to the commodity, and shall report to the participating governments and to the Organization its findings and its recommendations as to how best to deal with any special difficulties which may exist or may be expected to arise. The Organization shall promptly transmit to the Members these findings and recommendations.

ARTICLE 51 (49)

COMMODITY CONFERENCES

1. On the basis of the recommendations of a Study Group, or at the request of Members, the interest of which represents a substantial part of world production or consumption of, or trade in, a particular primary commodity, the Organization shall promptly convene an inter-governmental conference to discuss measures designed to meet the special difficulties which exist

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\* This Article was not referred to the Sub-Committee by the Commission.

or are expected to arise. The Organization may also, on its own initiative, call such a conference on the basis of information agreed to be adequate by the Members having a substantial interest in the commodity.

2. Every Member which considers that it has a substantial interest in the production or consumption of, or trade in, the commodity concerned, shall be invited to participate in such a Conference. Non-Members may also be invited to participate.

ARTICLE 52 (51)

GENERAL PRINCIPLES OF INTER-GOVERNMENTAL COMMODITY AGREEMENTS

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

- (a) such agreements shall be open initially to participation by any Member on terms no less favourable than those accorded to any other country and thereafter in accordance with such procedure and upon such terms as may be established by the Commodity Council subject to approval by the Organization;
- (b) non-Members may be invited by the Organization to participate in such agreements and the provisions of sub-paragraph (a) of this Article applying to Members shall apply to any non-Member so invited;
- (c) under such agreements there shall be equitable treatment as between participating countries and non-participating Members, and the treatment accorded by participating countries to non-participating Members shall be no less favourable than that accorded to any non-participating non-Member; due consideration being given in each case to policies adopted by non-participants in relation to obligations assumed and advantages conferred under the agreement;
- (d) such agreements shall include provision for adequate participation of countries substantially interested in the importation or consumption of the commodity as well as those substantially interested in its exportation or production;
- (e) such agreements shall provide, where practicable and appropriate, for measures designed to expand world consumption of the commodity;
- (f) full publicity shall be given to any inter-governmental commodity agreement proposed or concluded, to the statements of considerations and objectives advanced by the proposing Members, to the nature and development of measures adopted to correct the underlying situation which gave rise to the agreement and, periodically, to the operation of the agreement.

ARTICLE 53 (60(3))

TYPES OF AGREEMENTS

1. For the purposes of this Chapter, there shall be recognized two classes of inter-governmental commodity agreements:
  - (a) Commodity control agreements as defined in this Article; and
  - (b) Agreements other than commodity control agreements.
2. Subject to the provisions of paragraph 5 of this Article\* a "commodity control agreement" is an inter-governmental agreement which involves:
  - (a) the regulation of production or the quantitative control of exports or imports of a primary commodity and has the purpose or might have the effect of reducing, or preventing an increase in, the production of, or trade in, that commodity; or
  - (b) the regulation of prices.
3. The Organization shall, on the request of a Member, a Study Group, or a Commodity Conference, make a finding as to whether an existing or proposed inter-governmental agreement is a commodity control agreement within the terms of paragraph 2 of this Article.
4.
  - (a) Commodity control agreements shall be subject to all of the provisions of this Chapter.
  - (b) Agreements other than commodity control agreements shall be subject to the provisions of this Chapter other than those of Section C. If, however, the Organization finds that an agreement which involves the regulation of production or the quantitative control of exports or imports is not a commodity control agreement, the Organization shall stipulate to which, if any, of the provisions of Section C that agreement shall conform.
5. The Organization may find that an existing or proposed inter-governmental agreement which has the purpose of securing the co-ordinated expansion of aggregate world production and consumption of a primary commodity is not a commodity control agreement even though the agreement contains provision for the future application of minimum prices; provided that any such agreement shall be deemed to be a commodity control agreement and shall conform to all the provisions of Section C from the date on which its minimum price provisions become operative.

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\* The Legal Drafting Committee is to be asked whether, in its view, the words shown in square brackets are redundant and might be deleted.

SECTION C - INTER-GOVERNMENTAL COMMODITY CONTROL AGREEMENTS

ARTICLE 54 (52)

CIRCUMSTANCES GOVERNING THE USE OF COMMODITY CONTROL AGREEMENTS.

1. Members agree that commodity control 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 be corrected by normal market forces, 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 underemployment 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 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.
2. Determinations under this Article shall be made through the Organization by consultation among the Members substantially interested in the commodity concerned.

ARTICLE 55 (53)

ADDITIONAL PRINCIPLES GOVERNING COMMODITY CONTROL AGREEMENTS.

Members shall adhere to the following principles governing commodity control agreements in addition to those stated in Article 52:

- (a) Members agree not to enter into any new commodity control agreement unless it has been recommended by a conference called in accordance with Article 51. Nevertheless, Members substantially interested in the production and consumption of, or trade in, a particular primary 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;

- (b) such agreements shall be designed to assure the availability of supplies adequate at all times for world demand at reasonable prices;
- (c) under such agreements, participating countries, which are largely interested in imports of the commodity concerned, shall, in determinations made relating to substantive matters, have together a voice equal to that of those largely interested in obtaining export 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 classes, shall have an appropriate voice;\*
- (d) such agreements shall make appropriate provision to afford increasing opportunities for satisfying national consumption and world market requirements from sources from which such requirements can be supplied in the most effective and economic manner, due regard being had to the need for preventing serious economic and social dislocation and to the position of producing areas which may be suffering from abnormal disabilities;
- (e) participating countries shall formulate and adopt programmes of domestic adjustment believed to be adequate to ensure as much progress as practicable within the time limits of the agreement towards solution of the commodity problem.

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\* Under sub-paragraph (c) it is intended:

- (i) that there shall be no more than two groups of countries within an agreement, and that the principle of "equal voice" in substantive matters shall apply as between them;
- (ii) that countries which are large producers and consumers of the commodity concerned, but which are not large exporters or importers, shall have an appropriate voice.

It is understood that any difference in a Commodity Conference on voting arrangements may naturally be the subject of an appeal to the Organization under Chapter VIII (Article 86(2)).

ARTICLE 56 (54)

ADMINISTRATION OF COMMODITY CONTROL AGREEMENTS

1. Each commodity control agreement shall provide for the establishment of a governing body, herein referred to as a Commodity Council.
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 55.
3. The Organization shall be entitled to appoint a non-voting representative to each Commodity Council and may invite any competent inter-governmental organization to nominate a non-voting representative for appointment to a Commodity Council.
4. Each Commodity Council shall have a non-voting chairman who, if the Council so requests, shall be nominated by the Organization.
5. The Secretariat of each Commodity Council shall be appointed by the Council after consultation with the Organization.
6. Each Commodity Council shall adopt appropriate rules of procedure and regulations regarding its activities, provided that they are not found by the Organization to be inconsistent with the principles and provisions of this Chapter.
7. Each Commodity Council shall make periodic reports to the Organization on the operation of the agreement which it administers. In addition it shall make such special reports as the Organization may specify or as the Council itself considers to be of value to the Organization.
8. The expenses of a Commodity Council shall be borne by the participating countries.
9. When an agreement is terminated, the Organization shall take charge of archives and statistical material of the Commodity Council.

ARTICLE 57 (55)

PROVISION FOR INITIAL TERMS, REVIEW AND RENEWAL OF COMMODITY  
CONTROL AGREEMENTS

1. Commodity control agreements shall be concluded for a period of not more than five years, and any renewal shall be for a period not exceeding five years. Such renewed agreements shall conform to the provisions of this Chapter.
2. Periodically, at intervals no greater than three years, the Organization shall prepare and publish a review of the operation of each agreement in the light of the principles set forth in this Chapter. Moreover, a commodity control agreement shall provide that if, in the opinion of the Organization, its operation has failed substantially to conform to the principles laid down in this Chapter, participating countries shall revise the agreement to conform to the principles, or shall terminate it.
3. Commodity control agreements shall include provision governing the subject of withdrawal of any party.

ARTICLE 58 (56)

SETTLEMENT OF DISPUTES

Any question or difference concerning the interpretation of the provisions of a commodity control 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 86.

SECTION D - MISCELLANEOUS PROVISIONS

ARTICLE 59 (50)

RELATIONS WITH INTER-GOVERNMENTAL ORGANIZATIONS

With the object of ensuring appropriate co-operation in matters relating to inter-governmental commodity agreements, any inter-governmental organization, which is deemed to be competent by the Organization, such as the Food and Agriculture Organisation, shall be entitled:

- (a) to attend any Study Group or Commodity Conference;
- (b) to ask that a study of a primary commodity be made;
- (c) to submit to the Organization any relevant study of a primary commodity, and, on the basis thereof, to recommend to the Organization that further study of the commodity be made or that a Commodity Conference be convened.

ARTICLE 60\* (57)

OBLIGATIONS OF MEMBERS REGARDING EXISTING AND PROPOSED  
COMMODITY AGREEMENTS.

1. Members shall transmit to the Organization the full text of each inter-governmental commodity agreement in which they are participating at the time of the coming into force of their obligations under this Charter. Members shall also transmit to the Organization appropriate information regarding the formulation, provisions and operation of such agreements. Members shall conform with the decisions made by the Organization regarding their continued participation in any such inter-governmental commodity agreement which, after review by the Organization, shall have been found to be inconsistent with the intentions of this Chapter.

2. Members shall transmit to the Organization appropriate information regarding any negotiations, looking to the conclusion of an inter-governmental commodity agreement, in which they are participating at the time of the coming into force of their obligations under this Charter. Members shall also conform with decisions made by the Organization regarding their continued participation in any such negotiations. The Organization may dispense with the requirement of a Study Group or a Commodity Conference, if it finds them unnecessary in the light of the negotiations.

ARTICLE 61 (60(2))

TERRITORIAL APPLICATION.

For the purposes of this Chapter, the term "Member" or "non-Member" shall be taken to mean a Member or non-Member of the Organization with its dependent territories. If a Member or non-Member and its dependent territories form a group, of which one or more units are mainly interested in the export of a commodity and one or more in the import of the commodity, there may be either joint representation for all the associated territories or, where it is so desired, separate representation for the territories mainly interested in export and separate representation for the territories mainly interested in import.

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\* This Article was not referred to the Sub-Committee by the Commission.

ARTICLE 62 (59)

EXCEPTIONS TO PROVISIONS RELATING TO INTER-GOVERNMENTAL  
COMMODITY AGREEMENTS.

1. The provisions of Chapter VII shall not apply:
  - (a) to any bilateral agreement relating to the purchase and sale of a commodity falling under Section E of Chapter V;
  - (b) to any inter-governmental commodity agreement involving no more than one exporting country and no more than one importing country, and not covered by sub-paragraph (a) above, provided that if, upon complaint of a non-participating Member, the Organization finds that the interests of that Member are seriously prejudiced by the agreement, the agreement shall become subject to such provisions of Chapter VII as the Organization may stipulate;
  - (c) to those provisions of inter-governmental commodity agreements which appropriately relate to the protection of public morals or of human, animal or plant life or health; provided, that such agreements are not used to accomplish results inconsistent with the objectives of Chapter VI or Chapter VII;
  - (d) to agreements 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\*.
2. The provisions of Articles 50 and 51 and of Section C of Chapter VII shall not apply to inter-governmental commodity agreements found by the Organization to relate solely to the equitable distribution of commodities in short supply.
3. The provisions of Section C shall not apply to commodity control agreements found by the Organization to relate solely to the conservation of fisheries or wild life or other exhaustible natural resources.

\* A proposal has been made for the deletion of this sub-paragraph in the light of an amendment to be considered by Commission A regarding the exclusion of such agreements from the whole Charter.