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THIRD COMMITTEE: COMMERCIAL POLICY

ARTICLE 43

The delegations of Guatemala and Uruguay have proposed the following amendment to paragraph 2 of Article 43 as it appears in E/CONF.2/C.3/37/Corr.1. The following new sub-paragraph should be inserted and the existing paragraph should be called "(b)":

"(a) Measures instituted or maintained under paragraph 1 (a) (iii) shall be communicated, with a statement of reasons, to a Technical Commission to be established in accordance with the provisions of Article 79. The said Commission shall take cognizance of such claims as may be put forward by any Member considering that its interests are prejudiced."

The following statement is given in support of this proposal:

"The reasons for this proposal are sufficiently clear and simple. Not only are the agricultural countries faced with provisions of the Charter that specifically authorize adoption of restrictive measures in respect of their products by countries which are not agricultural, but by applying the clause of Article 43 which it is proposed to amend, a State could unilaterally deny entry through its customs to all agricultural or stock breeding imports.

"The high aims of those who drafted the Geneva text are clearly apparent and these aims are also shared by the present writers. But it would be worthwhile considering the advisability of regulating the scope of this provision.

"The exports of the industrial countries are fully protected by many provisions and we believe it would be well worth considering this other class of exports.

"The proposed Technical Commission would not act as a court of guardians, but in an advisory capacity. Through the information which Members having recourse to Article 43 would be obliged to supply, the Commission would soon be in possession of really adequate evidence on which to issue an opinion on cases in dispute.

"It may be argued that the matter we are dealing with is covered by the Charter, since Article 79 provides that 'the Conference shall /establish

establish such Commissions as may be required for the performance of the functions of the Organization' etc., and that as the preamble to Article 43 lays down that the measures authorized therein shall not be 'applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination' or 'a disguised restriction on international trade', the means of ensuring compliance with the provision is specifically that which we propose. Nevertheless, we believe that nothing will be lost and, on the contrary, much will be gained if the procedure is clearly established.

"Moreover, the amendment makes detailed information on restrictive measures compulsory, although no binding character is given to the opinion of the Commission."