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REPORT OF SUB-COMMITTEE 'H' ON SUBSIDIES

PART I

1. The Sub-Committee was appointed at the Twenty-Seventh Meeting (7 January 1948) of the Third Committee (III.b.). It was given the following terms of reference:

"(a) to consider all proposed amendments to Section C of Chapter IV of the Draft Charter as contained in document E/CONF.2/C.3/8, together with all suggestions and proposals made during discussion of those proposed amendments in Committee III.b; and

(b) to recommend texts to reconcile the various points of view expressed".

2. The Sub-Committee consisted of representatives of the following delegations:

Argentina, Australia, Brazil, Canada, Cuba, Denmark, France, Netherlands, Peru, Philippines, Sweden, Turkey, United Kingdom, United States of America and Venezuela.

3. Mr. E. McCARTHY (Australia) was elected Chairman. At the seventh meeting of the Sub-Committee Mr. G. WARWICK SMITH (Australia) was elected in place of Mr. McCarthy who had to leave Havana.

4. At the fifth meeting of the Sub-Committee it was decided to set up a Working Party to examine proposed amendments to Articles 26 to 29. The Working Party consisted of representatives of Brazil, Canada, Peru, United Kingdom, United States of America and Venezuela, together with the Chairman of the Sub-Committee. It held ten meetings and its Report to the Sub-Committee is contained in document E/CONF.2/C.3/H/6.

5. The Sub-Committee held eight meetings and reached general agreement on a text to submit to the Committee.

6. Part II of this Report contains a brief statement on the main changes in the text and on the manner in which the Sub-Committee dealt with proposed amendments.

7. The text of Section C - Subsidies - (Articles 25-29) as agreed by the Sub-Committee is attached as an annex to this Report. In relation to the Geneva text, agreed deletions are indicated by square brackets and agreed additions by underlining.

/PART II

PART II

(References are to items in E/CONF.2/C.3/8)

General

(a) The delegation of Brazil provisionally reserved its position on Section C.

(b) The delegation of Peru wished its view recorded that there was a difference of treatment as between subsidies which operate directly or indirectly to maintain or increase the export of any primary commodity, and subsidies which operate directly or indirectly to reduce, or prevent an increase in, the imports of any primary commodity. The former were subject to the provisions of Article 28, while the latter were subject only to the much weaker provisions of Article 25. In their view the latter type of subsidy ought to be subject also to provisions parallel to those of Article 28, because the interests of exporting countries were prejudiced just as much by a subsidy which decreases imports in an importing country as by one which increases exports from a competing exporting country. Consequently the delegation of Peru reserved its position on Section C.

(c) The Sub-Committee considered an inquiry from the Central Drafting Committee as to whether it was desired that references in Section C to primary commodities should be covered by the definition of a "primary commodity" contained in Article 53. It was agreed that the definition contained in paragraph 1 of Article 53 was applicable to all such references.

(d) The Sub-Committee considered the suggestions of the International Chamber of Commerce (E/CONF.2/14) regarding the arrangement of the Section, but thought that the present arrangement was appropriate.

Article 25

(a) The Sub-Committee was unable to agree to the inclusion of the words "direct or indirect", or of an alternative amendment having a similar purpose, proposed by the delegation of Cuba (Item 2).

The representative of Cuba explained to the Sub-Committee that the amendment constituted a matter of immediate and practical importance to his country, which could not afford to promote its economic development by the methods of direct subsidization. It had therefore introduced a system by which certain domestic industries were exempted from internal taxes payable on imported goods. This was simpler in practice than, though no different in principle from, the system of "payments to domestic producers derived from the proceeds of internal taxes or charges" which was permitted under

/paragraph 5

paragraph 5 of Article 18. The system employed in Cuba had secured favourable results, particularly in encouraging capital investment, both domestic and foreign.

The Sub-Committee was in general agreement that the terms of Article 25 were sufficiently wide to cover a case such as that described by the Cuban delegation. It was considered that the proposals of Cuba in regard to Article 25 would not alter the sense of the Article, nor would they have the effect of permitting continuance of the Cuban system if it conflicted with other provisions of the Charter such as those regarding non-discrimination. The appropriate place to consider an amendment with this purpose was under Article 18 concerning the non-discriminatory application of internal taxation. The representative of Cuba maintained the reservation of his delegation on Article 25.

(b) Arising from an amendment proposed by the United States delegation (Item 3), it was agreed to make the following changes in the first sentence:

"....which operates directly or indirectly to maintain or increase exports of any product from, or to reduce, or prevent an increase in, imports of any product into...."

It was felt that the existing text of the Article failed to cover subsidies which, whilst not increasing a Member's exports nor reducing its imports, might nevertheless affect a Member's share of total trade.

(c) It was agreed to accept the proposal by the United States delegation to introduce in the last sentence the phrase "a Member considers" in place of determinations by the Organization. It was thought that this change was consistent with similar changes made in Chapter VI and would expedite procedure.

Article 26

Paragraph 1

The Sub-Committee was unable to accept the proposal of the United States delegation (Item 18) to except subsidies on primary commodities from the provisions of paragraph 1, and the consequential changes proposed in regard to other Articles. The United States delegation, however, submitted alternative suggestions to which reference is made in the notes on Articles 27 and 28 below.

Paragraph 2

(a) Drafting changes proposed by the United States delegation have been accepted with slight modification.

/(b) The insertion

(b) The insertion of the words "in general of those products" after "payments to domestic producers" is intended to make it clear that the payments in question refer to general subsidisation of domestic producers of like products.

(c) The delegation of Sweden withdrew its proposal (Item 5) to insert the words "directly or indirectly" between the words "taxes" and "imposed". It is understood that the text - particularly the phrase "remission of such duties or taxes.....which have accrued" - covers the case of remission of duties or taxes imposed on raw materials and semi-manufactured products subsequently used in the production of exported manufactured goods.

(d) It was understood that the term "like products" is intended to mean closely similar products in the corresponding stage of production, allowing for such differences as are necessary for export purposes.

Paragraph 3

(a) The Sub-Committee was unable to accept the proposal by the delegation of Argentina (Item 6) to delete the time-limit provisions in this paragraph. The delegation of Argentina reserved its right to reopen the question in Committee.

(b) The introduction of the words "and if so on what terms" in the last sentence of paragraph 3 is prompted by the decision to exclude subsidies on non-primary commodities from the provisions of Article 28. It was felt that the position of the Organization in relation to such subsidies should be stated more explicitly.

(c) The Sub-Committee agreed to certain drafting changes proposed by the delegation of the Netherlands.

Proposed New Paragraph

The Sub-Committee considered the proposal by the delegation of Venezuela (Item 7) to insert a new paragraph designed to except certain types of subsidy from the provisions of paragraph 1 of Article 26. It was felt that the subsidies in question, i.e. those whose effect on world trade in the commodity is of minor significance, would be largely covered by the proposed new texts of paragraphs 3 and 5 of Article 27, and of sub-paragraphs 4 (b) and 4 (c) of Article 28. In particular it was understood that the phrase "if an agreement is inappropriate" in the proposed text of paragraph 5 of Article 27 meant that if Chapter VI procedure was inappropriate (including cases judged to be inappropriate by the Organization under Article 55, paragraph 2), a Member could grant or maintain an export subsidy without being bound to seek an inter-governmental agreement on the commodity in question. Moreover, in cases

/where negotiations

where negotiations did take place toward an inter-governmental agreement, a Member would be free (under paragraph 3 of Article 27), pending the outcome of such negotiations, to maintain export subsidies on the commodity in question.

Article 27

General

Specific references in Article 27 to the provisions of Article 28 are not intended to be exclusive. They are included for purposes of emphasis.

Paragraph 1

It was agreed to insert in sub-paragraph (a) the words "or is so designed as to result" after the words "has also resulted". It was felt that this covered the substance of a similar amendment proposed by the delegation of Venezuela (Item 8).

A corresponding addition has been made in sub-paragraph (b).

Proposed New Paragraph 2

The Sub-Committee considered the new paragraph proposed by the delegation of the Netherlands (Item 9) relating to certain types of price stabilization schemes. It was generally agreed that a system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movement of import prices, which results, or is so designed as to result, in the sale of the commodity in the domestic market at a price at times higher and at times lower than the comparable landed cost for the imported product, should be treated as a case under Article 25. On this understanding the delegation of the Netherlands withdrew its proposal.

Paragraph 2

Paragraph 2 is a new provision emphasizing the responsibility of Members granting any form of subsidy on a primary commodity to co-operate in negotiating inter-governmental agreements under Chapter VI.

Paragraph 3

(a) This paragraph takes the place of paragraph 2 in the Geneva text of Article 27. The Sub-Committee was unable to accept the proposal by the delegations of Argentina and Peru (Item 10) to delete the paragraph.

(b) The paragraph has been redrafted to make it clear that, as regards serious prejudice caused by the granting of a subsidy, the paragraph applies to all types of subsidization of primary commodities.

(c) A new provision has been added to permit a Member to maintain a subsidy pending the outcome of negotiations under Chapter VI.

Paragraph 4

Paragraph 4 is a new provision prohibiting a Member from granting a new

/subsidy or

subsidy or increasing an existing subsidy, affecting the export of a primary commodity, during a commodity conference dealing with the commodity in question, unless the Organization concurs. This provision serves to limit the above-mentioned new provision contained in paragraph 3. The Sub-Committe was unable to agree to a proposal by the delegation of Argentina to delete the phrase "unless the Organization concurs", and that delegation reserved its right to re-open the question in Committee.

Paragraph 5

(a) This paragraph takes the place of paragraph 3 in the Geneva text of Article 27. The Sub-Committee was unable to accept the proposal by the delegations of Argentina and Peru (Item 10) to delete the paragraph; the delegation of Argentina was satisfied, however, that its point was covered by the new text. The delegation of Peru reserved its position on the paragraph.

(b) On the basis of a suggestion by the United States representative, the paragraph has been redrafted in order to permit Members, considering their interests seriously prejudiced, to apply or maintain export subsidies on primary commodities, without prior approval or a determination by the Organization, where Chapter VI procedure has failed or does not promise to succeed or where an inter-governmental agreement is inappropriate. It is recognized that any judgment by a Member that an agreement is "inappropriate" could subsequently be challenged by any other Member through the procedure of Chapter VI.

Article 28

(a) In the light of the relaxation of the provisions of Article 27 the safeguards contained in Article 28 have been strengthened. In particular, provision has been made, where consultation fails, for the Organization to make findings to which Members shall conform. Other changes which have been agreed are as follows:

(i) The Article now refers not only to export subsidies but to any form of subsidy operating directly or indirectly to increase or maintain exports; its application, however, is now limited to primary commodities.

(ii) The concept of a "previous representative period" as the basic criterion has been replaced by that of "an equitable share of world trade". This is intended to meet criticisms that the Article, as in the Geneva text, would tend to stabilize an existing trade situation to the detriment of under-developed countries. It is thought that the new text will, in this respect cover the case of these countries and

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go some way to meet the position of the delegation of Argentina expressed in its proposal (Item 12) to delete the Article.

(iii) Factors are specified which, amongst others, the Organization shall take into consideration in reaching its findings on an "equitable share". In regard to sub-paragraph (b) of Article 28 it is understood that the terms "the economy" and "the economies" mean national economy as a whole and would include the balance of payments situation of the Members concerned. The terms would naturally cover any special aspects of the economic structure of a Member.

(b) It was felt that the new text, by its application of safeguards to general subsidies affecting exports, partly met the point raised in the amendment submitted by the delegation of Brazil (paragraph 2 of proposed Article 27 A. See E/CONF.2/C.3/H/5). Regarding the other point raised by the delegation of Brazil (paragraph 1 of proposed Article 27 A), which was referred to Sub-Committee "A" (on Articles 16-19), the Sub-Committee has noted the latter's decision, namely that a majority of the Members of Sub-Committee "A" felt that it was unnecessary to insert the amendment, whereas a minority supported the Brazilian proposal, at least in principle. (See E/CONF.2/C.3/A/W.45).

(c) The representative of Argentina proposed amending paragraph 3 so as to remove the provision that a Member should conform to a finding by the Organization. The Sub-Committee was unable to accept the proposal, and the representative of Argentina reserved his delegation's position on the paragraph.

(d) In regard to paragraph 4 (d), one delegation called attention to the fact that a major consideration in deciding what is an "equitable share" is the extent to which a country may successfully have limited the supply of a surplus commodity. This is recognized as concerns one kind of such limitation in the reference to paragraph 1 of Article 27. However, there are other methods of limiting supply which also deserve mention because of their specific and important relevance.

(e) The term "other measures" in paragraph 4 (e) refers only to measures permitted under Section 'C'.

Article 29

It was agreed to delete this Article and instead to make appropriate reference to the Organization in paragraph 3 of Article 26 and in paragraph 1 of Article 27 in regard to the determinations provided for in those paragraphs. The deletion of Article 29 had been proposed by the delegation of Argentina (Item 15).

/ANNEX

ANNEX

SECTION 'C' - SUBSIDIES

(Note: in relation to the Geneva text, square brackets indicate proposed deletions and underlining proposed additions).

Article 25

Subsidies in General*

If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to maintain or increase exports of any product from, or to reduce, or prevent an increase in, imports of any product into, its territory, the Member shall notify the Organization in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from the territory of the Member and of the circumstances making the subsidization necessary. In any case in which [it is determined] a Member considers that serious prejudice to [the] its interest [of any other Member] is caused or threatened by any such subsidization, the Member granting the subsidy shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.

Article 26

Additional Provisions on Export Subsidies

1. No Member shall grant, directly or indirectly, any subsidy on the export of any product, or establish or maintain any other system, which subsidy or system results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in the conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. [Notwithstanding the provisions of paragraph 1 of this Article a Member may exempt] The exemption of exported products from duties or taxes imposed in respect of like products when consumed domestically, or [may remit] the remission of such duties or taxes in amounts not in excess of those which have accrued [.], shall not be construed to be in conflict with the provisions of paragraph 1 of this Article. The use of the proceeds of such duties or taxes to make payments to domestic producers in general of those products [however,] shall be considered as a case under Article 25 [except insofar as such payments subsidize exportation, in the sense of paragraph 1 of this

* Article 25 was not referred to the Working Party, but is included here for convenience of reference.

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Article, by more than the amount of the duties or taxes remitted or not imposed, in which case the provisions of paragraph 1 of this Article shall apply to such excess payments.]

3. Members shall give effect to the provisions of paragraph 1 of this Article at the earliest practicable date, but [in any event] not later than two years from the day on which this Charter enters into force. If any Member considers itself unable to do so in respect of any [specified] particular product or products, it shall, at least three months before the expiration of such period, give notice in writing to the Organization, requesting a specific extension of the period. Such notice shall be accompanied by a [complete] full analysis of the system in question and the [effects] circumstances justifying it. [It] The Organization shall then [be] determine[d] whether, and if so on what terms, the extension requested should be made.

4. Notwithstanding the provisions of paragraph 1 of this Article, any Member may subsidize the exports of any product to the extent and for such time as may be necessary to offset a subsidy granted by a non-Member affecting the Member's exports of the product. However, the Member shall, upon the request of the Organization or of any other Member which considers that its interests are [adversely affected] seriously prejudiced by such action, consult with that Member or with the Organization with a view to reaching a satisfactory adjustment of the matter.

Article 27

Special Treatment of Primary Commodities

1. A system for the stabilization of the domestic price of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, shall be considered not to involve a subsidy on export within the meaning of paragraph 1 of Article 26, if [it is] the Organization determine[d] that

(a) [that] the system has also resulted, or is so designed as to result, in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market[,]; and

(b) [that] the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other Members.

2. Any Member granting a subsidy affecting a primary commodity shall co-operate at all times in efforts to negotiate agreements under the procedures

/of Chapter VI

of Chapter VI.

[2. In any case of subsidization of a primary commodity, if a Member considers that its interests are seriously prejudiced by the subsidy or if the Member granting the subsidy considers itself unable to comply with the provision of paragraph 3 of Article 26 within the time limit laid down therein, the difficulty may be deemed to be a special difficulty under Chapter VI and in that event the procedure laid down in that Chapter shall be followed.]

[2.]3. In any case involving a primary commodity, if a Member considers that its interests would be seriously prejudiced by compliance with the provisions of Article 26, or if a Member considers that its interests are seriously prejudiced by the granting of any form of subsidy, the procedure laid down in Chapter VI may be followed. The Member which considers that its interests are thus seriously prejudiced shall, however, be exempt provisionally from the requirements of paragraphs 1 and 3 of Article 26 in respect of that commodity, subject to the provisions of Article 28

4. No Member shall grant a new subsidy or increase an existing subsidy affecting the export of a primary commodity during a commodity conference called for the purpose of negotiating an inter-governmental control agreement for the commodity concerned unless the Organization concurs. Any such new or additional subsidy shall be subject to the provisions of Article 28.

[3.] 5. If the measures provided for in Chapter VI have not succeeded, or do not promise to succeed, within a reasonable period of time, [either because] or if [no] an agreement [has been reached or because the agreement] is [terminated, any Member adversely affected may apply for exemption] inappropriate, any Member which considers that its interests are seriously prejudiced shall not be subject to [from] the requirements of paragraphs 1 and 3 of Article 26 in respect of that commodity[. If it is determined that the circumstances described in Article 59 apply to the commodity concerned and that the subsidization will not be so operated as to stimulate exports unduly or otherwise seriously prejudice the interests of other Members, the Organization shall grant such exemption for such period and within such limits as may be determined.], subject to the provisions of Article 28.

Article 28

Undertaking Regarding Stimulation of Exports of Primary Commodities

[Notwithstanding the provisions of paragraphs 1, 2 and 3 of Article 26 and of paragraph 3 of Article 27, no Member shall grant any subsidy on the exportation of any product which has the effect of acquiring for that Member a share of world trade in that product in excess of the share which it had during a previous representative period, account being taken insofar as

/practicable

practicable of any special factors which may have affected or may be affecting the trade in that product. The selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member granting the subsidy; Provided that such Member shall, upon the request of any other Member having an important interest in the trade in that product, or upon the request of the Organization, consult promptly with the other Member or with the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.7

1. Any Member granting any form of subsidy which operates directly or indirectly to maintain or increase the export of any primary commodity from its territory shall not apply the subsidy in such a way as to have the effect of maintaining or acquiring for that Member more than an equitable share of world trade in that commodity.

2. The Member granting such subsidy shall promptly notify the Organization of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected commodity exported from its territory, and of the circumstances making the subsidization necessary. The Member shall promptly consult with any other Members which consider that serious prejudice to their interests is caused or threatened by the subsidization.

3. If, within a reasonable period of time, no agreement is reached in such consultation, the Organization shall make a finding as to what constitutes an equitable share and the Member granting the subsidy shall conform to this finding.

4. In making its finding, the Organization shall take into account any factors which may have affected, or may be affecting, world trade in that primary commodity and shall have particular regard to

(a) the Member's share of world trade in the commodity in a previous representative period;

(b) whether the subsidizing Member's share of world trade in the commodity is so small that the effect of the subsidy on such trade is likely to be of minor significance;

(c) the degree of importance of the external trade in the commodity to the economy of the Member granting, and to the economies of the Members materially affected by, the subsidy;

(d) the existence of price stabilization systems in accordance with paragraph 1 of Article 27;

(e) the desirability of facilitating the gradual expansion of production for export in those areas able to satisfy world market requirements of the commodity concerned in the most effective and economic manner, and therefore of limiting any subsidies or other measures which make that expansion difficult.
