

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE F ON ARTICLES 21, 23 AND 24

DRAFT TEXT OF ARTICLES 21 AND 24 AS APPROVED AT THE TENTH
AND ELEVENTH MEETINGS OF SUB-COMMITTEE F

Article 21

Restrictions to Safeguard the Balance of Payments

1. The Members recognize that
 - (i) it is primarily the responsibility of each Member to safeguard its external financial position and to achieve and maintain stable equilibrium in its balance of payments;
 - (ii) an adverse balance of payments of one Member may have important effects on the trade and balance of payments of other Members, if it results in, or may lead to, the imposition by the Member of restrictions affecting international trade;
 - (iii) the balance of payments of each Member is of concern to other Members, and therefore it is desirable that the Organization should promote mutual consultations and, where possible, agreed action consistent with this Charter for the purpose of correcting a maladjustment in the balance of payments; and that
 - (iv) action taken to restore stable equilibrium in the balance of payments should, so far as the Member or Members concerned find possible, employ methods which expand rather than contract international trade.
- 1.7 2. Notwithstanding the provisions of paragraph 1 of Article 20, 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, subject to the provisions of the following paragraphs of this Article.
- 2.7 3. (a) No Member shall institute, maintain or intensify import restrictions under this Article except to the extent necessary
 - (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or
 - (ii) in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves;

/due regard

due regard being paid in either case to any special factors which may be affecting the Member's reserves or need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(b) A Member /s/ applying restrictions under sub-paragraph (a) shall progressively relax and ultimately eliminate them as /such conditions/ its external financial position improves, in accordance with the provisions of that sub-paragraph. /maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application./ This provision shall not be interpreted to mean that a Member is required to relax or remove such restrictions if that relaxation or removal would thereupon produce conditions justifying the intensification or institution respectively of restrictions under sub-paragraph (a). /They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph./

(c) Members undertake:

/[(i)]/ (i) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities, the exclusion of which would impair regular channels of trade, or restrictions which would prevent the importation of commercial samples, or prevent /compliance with patent, trademark, copyright, or similar procedures/ the importation of such minimum quantities of a product as may be necessary to obtain and maintain patent, trademark, copyright or similar rights under industrial or intellectual property laws; and

/[(iii)]/ (iii) to apply restrictions under this Article in such a way as to avoid unnecessary damage to the commercial or economic interests of any other Member including interests under Articles 3 and 9.

(Secretariat note: paragraphs 3 (c) (i) and (ii) were paragraphs 3 (c) (ii) and (iii) of the Geneva text.)

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3. 4. (a) The Members recognize that in the early years of the Organization all of them will be confronted in varying degrees with problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this Article or under Article 23, take full account of the difficulties of post-war adjustment and of the need which a Member may have to use import restrictions as a step towards the restoration of equilibrium in its balance of payments on a sound and lasting basis.
- (b) The Members recognize that, as a result of domestic policies directed toward the fulfilment of a Member's obligations under Article 3 relating to the achievement and maintenance of full and productive employment and large and steadily growing demand or its obligations under Article 9 relating to the reconstruction or development of industrial and other economic resources and to the raising of standards of productivity, such a Member may experience a high level of demand for imports such pressure on its monetary reserves as to justify restrictions under sub-paragraph 3 (a) of this Article.

Accordingly:

- (i) notwithstanding the provisions of paragraph 2 of this Article no Member shall be required to withdraw or modify restrictions on the ground that a change in such policies would render unnecessary the restrictions which it is applying under this Article.
- (ii) any Member applying import restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes or products in such a way as to give priority to the importation of those products which are more essential in the light of such policies.
- (c) Members undertake, in carrying out their domestic policies ;, (i) to pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources ; .
- (ii) (transferred to 2 (c) (i))
- (iii) (transferred to 2 (c) (ii))
4. 2. (a) Any Member which is not applying restrictions under this Article, but is considering the need to do so, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately after doing so), consult with the
- /Organization as to

Organization as to the nature of its balance-of-payments difficulties, alternative corrective measures which may be available, and the possible effect of such measures on the economies of other Members.

No Member shall be required in the course of consultations under this sub-paragraph to indicate in advance the choice or timing of any particular measure which it may ultimately determine to adopt.

(b) The Organization may at any time invite any Member which is applying import restrictions under this Article to enter into such consultations with it, and shall invite any Member substantially intensifying such restrictions to consult within thirty days. A Member thus invited shall participate in such discussions. The Organization may invite any other Member to take part in these discussions. Not later than two years from the day on which this Charter enters into force, the Organization shall review all restrictions existing on that day and still applied under this Article at the time of the review.

(c) Any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes, under this Article, to maintain, intensify or institute, or for the maintenance, intensification or institution of restrictions under specified future conditions. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or institution of restrictions by the Member in question insofar as the general extent, degree of intensity and duration of the restrictions are concerned. To the extent to which such approval has been given, the requirements of sub-paragraph (a) of this paragraph shall be deemed to have been fulfilled, and the action of the Member applying the restrictions shall not be open to challenge under sub-paragraph (d) of this paragraph on the ground that such action is inconsistent with the provisions of sub-paragraphs 2 (a) and 2 (b) of this Article.

(d) Any Member which considers that another Member is applying restrictions under this Article inconsistently with paragraph 2 3 3 4 of this Article or with Article 22 (subject to the provisions of Article 23) may bring the matter for discussion to the Organization; and the Member applying the restrictions shall participate in the discussion. The Organization, if it is satisfied that there is a prima facie case that the trade of the Member initiating the procedure is adversely affected, shall submit its view to the parties with the

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aim of achieving a settlement of the matter in question which is satisfactory to the parties and to the Organization. If no such settlement is reached and if the Organization determines that the restrictions are being applied inconsistently with paragraph 2 3 3 4 of this Article or with Article 22 (subject to the provisions of Article 23), the Organization shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, the Organization may release any Member from specified obligations under this Charter, towards the Member applying the restrictions.

(e) In consultations between a Member and the Organization under this paragraph there shall be full and free discussion as to the various causes and the nature of the Member's balance-of-payments difficulties. It is recognized that premature disclosure of the prospective application, withdrawal or modification of any restriction under this Article might stimulate speculative trade and financial movements which would tend to defeat the purposes of this Article. Accordingly, the Organization shall make provision for the observance of the utmost secrecy in the conduct of any consultation.

5.7 6 If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall initiate discussions to consider whether other measures might be taken, either by those Members whose balances of payments are under pressure or by those Members whose balance of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental organization, to remove the underlying causes of the disequilibrium. On the invitation of the Organization, Members shall participate in such discussions.

Interpretative Note to Article 21

Paragraph 3 (b) (1).

The phrase "notwithstanding the provisions of paragraph 2 of this Article" has been included in the text to make it quite clear that a Member's import restrictions otherwise "necessary" within the meaning of sub-paragraph 2 (a) shall not be considered unnecessary on the ground that a change in domestic policies as referred to in the text could improve a Member's monetary reserve position. The phrase is not intended to suggest that the provisions of paragraph 2 are affected in any other way.]

/Consideration was

Consideration was given to the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulation of their foreign trade. It was considered that the present text of Article 21 together with the provision for export controls in certain parts of the Charter, e.g. in Article 43, fully meet the position of these economies.

ARTICLE 24

Exchange Arrangements

Relationship with the International Monetary Fund and Exchange Arrangements

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the Organization.
2. In all cases in which the Organization is called upon to consider or deal with problems concerning monetary reserves, balance of payments or foreign exchange arrangements, the Organization shall consult fully with the International Monetary Fund. In such consultation, the Organization shall accept all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, and shall accept the determination of the Fund as to whether action by a Member in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that Member and the Organization. When the Organization, ~~in~~ for the purpose of reaching its final decision in cases involving the criteria set forth in paragraph 2 (a) of Article 21, is examining a situation in the light of the relevant considerations under all the pertinent provisions of Article 21, it shall accept the determination of the International Monetary Fund as to what constitutes a serious decline in the Member's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.
3. The Organization shall seek agreement with the International Monetary Fund regarding procedures for consultation under paragraph 2 of this Article. Any such agreement, other than informal arrangements of a temporary or administrative character, shall be subject to confirmation by the Conference.
4. Members shall not, by exchange action, frustrate the intent of the provisions of this Section, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.
5. If the Organization considers, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a manner inconsistent with the exceptions provided in this Section for quantitative restrictions it shall report thereon to the International Monetary Fund.
6. (a) Any Member of the Organization which is not a member of the International

/Monetary

Monetary Fund shall, within a time to be determined by the Organization after consultation with the International Monetary Fund, become a member of the Fund or, failing that, enter into a special exchange agreement with the Organization. A Member of the Organization which ceases to be a member of the International Monetary Fund shall forthwith enter into a special exchange agreement with the Organization. Any special exchange agreement entered into by a Member under this paragraph shall thereupon become part of its obligations under this Charter.

7. (a) (b) Such a special exchange agreement [between a Member and the Organization under paragraph 6 of this Article] shall provide to the satisfaction of the Organization that the objectives of this Charter will not be frustrated as a result of action in exchange matters by the Member in question.

[(b)] (c) The terms of any such agreement shall not impose obligations on the Member in exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

(d) No special exchange agreement shall be required of a Member so long as it uses solely the currency of another Member and so long as neither the Member nor the country whose currency is being used has exchange restrictions. Nevertheless, if the Organization at any time considers that the absence of a special exchange agreement may be permitting action which tends to impair the purposes of any of the provisions of this Charter, it may require the Member to enter into a special exchange agreement in accordance with the provisions of this Article. A Member of the Organization which is not a Member of the International Monetary Fund and which has no special exchange agreement may be required at any time to consult with the Organization on any exchange problem.

8.] 7. A Member which is not a member of the International Monetary Fund, whether or not it has a special exchange agreement, shall furnish such information within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the Organization may require in order to carry out its functions under this Charter.

9.] 8. Subject to paragraph 4 of this Article, nothing in this Section shall preclude:

(a) the use by a Member of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that Member's special exchange agreement with the Organization, or

/(b) the use

(b) the use by a Member of restrictions or controls on imports or exports, the sole effect of which, additional to the effects permitted under Articles 20, 21, 22 and 23, is to make effective such exchange controls or exchange restrictions.

Interpretative Note to Paragraph 4

The word "frustrate" is intended to indicate, for example, that infringements by exchange action of the letter of any Article of this Charter shall not be regarded as offending against that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus a Member which, as part of its exchange control, operated in accordance with the Articles of Agreement of the International Monetary Fund, required payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund would not thereby be deemed to be offending against Article 20 or Article 22. Another example would be that of a Member which specified on an import licence the country from which the goods might be imported for the purpose not of introducing any additional element of discrimination in its import licences but of enforcing permissible exchange controls.
