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SUB-COMMITTEE F (ARTICLES 21, 23, 24)

REPORT OF WORKING PARTY ON ARTICLE 23

1. At its Eighth Meeting, 17 January 1948, Sub-Committee F appointed a working party to consider amendments submitted to Article 23. The Working Party consisted of the delegates of Australia, Belgium, Canada, Czechoslovakia, France, Norway, United Kingdom and the United States of America. The delegate of Greece was also appointed a member of the Working Party for the purpose of considering an amendment to Article 23 submitted by Greece.

2. Mr. Neil Perry (Canada) was elected Chairman of the Working Party.

3. The following amendments were referred to the Working Party by Sub-Committee F. They are listed according to the paragraph of Article 23 to which they refer and are identified either as items in the Annotated Agenda (E/CONF.2/C.3/7) or as separate working papers submitted to the Sub-Committee.

Paragraph 1 (a)

Amendment by Czechoslovakia (W.14)

Paragraph 1 (b)

Entire paragraph - Amendment by Czechoslovakia (W.14)

Sub-paragraph (i) - Amendment by Norway (W.5)
Amendment by Belgium (W.6)

Sub-paragraph (ii) - Amendment by Belgium (W.6)
Amendment by France (W.3)

Paragraph 2

Amendment by Czechoslovakia (W.14)

Paragraph 3 (a)

Item 67 (Denmark)

Amendment by Czechoslovakia (W.14)

Paragraph 3 (c)

Item 68 (Mexico)

Amendment by Czechoslovakia (W.14)

Paragraph 3 - Proposed New Sub-paragraph

Item 69 (Italy)

Paragraph 5

Amendment by Czechoslovakia (W.14)

Paragraph 5 - Proposed New Sub-paragraph

Amendment by Norway (W.4)

/Paragraph 5

Paragraph 5 - Proposed New Sub-paragraph

Proposal by Greece (originally Item 78 and replaced by a new amendment submitted to the Working Party).

Proposed New Paragraph 6

Amendment by France (Item 74).

The Working Party also considered an amendment to Article 22 proposed by Syria and Lebanon (Item 60 of the Annotated Agenda) which was referred to it by Sub-Committee E of Committee III as falling more properly under Article 23.

4. In the course of its deliberations the Working Party heard statements from the delegates of Denmark, Italy, Lebanon, Mexico and Syria relating to their proposed amendments.

Representatives of the International Monetary Fund also participated in the meetings.

5. After a thorough consideration of the amendments mentioned above, the Working Party has concluded that a substantial redraft of Article 23 is desirable. Since, however, certain Members have already accepted the principles of Article 23 of the Geneva text and have begun to apply them, the Working Party considers that such Members should be allowed, if they so desire, to continue to apply these principles during the transitional period as defined below in paragraph 8. The Working Party accordingly submits the text which appears at the end of this report together with a proposed new Annex which embodies these principles. Three Interpretative Notes have been attached to the text of the Article and one to the Annex.

The new text does not require the Interpretative Note to paragraph 3 of Article 23 of the Geneva Draft and it has accordingly been dropped.

6. The major changes from the Geneva text of Article 23 are to be found in paragraphs 1, 2 and 4 of the revised Article.

7. In conjunction with the proposed revision of Article 23, it is considered desirable that paragraph 9 of Article 24 of the Geneva text (renumbered paragraph 8 in the text submitted by the Working Party on Article 24 and subsequently described by that number) be amended by the deletion of the phrase "Subject to paragraph 4 of this Article," at the beginning of the paragraph. As a consequence of this change the Working Party recommends that the interpretative note now attached to paragraph 4 of Article 24 of the Geneva text be attached to paragraph 8 of that Article, that the first sentence of the note be deleted, and that certain consequential drafting changes be made as shown in the attached text.

8. Paragraph 1 defines the exceptions to the rule of non-discrimination permissible during the post-war transitional period. This transitional period and its application in respect of individual members are defined by reference to the provisions of Article XIV of the International Monetary Fund or by

/reference to

reference to an analogous provision of a special exchange agreement pursuant to paragraph 6 of Article 24. The discriminatory measures, including adaptations thereof, permitted under paragraph 1 may be applied by a Member during the transitional period without the prior approval of the Organization.

Sub-paragraph 1 (d) provides that a Member may under certain conditions elect to operate during the transitional period under the Annex rather than under sub-paragraphs (b) and (c) of the Article. The subject matter of the Annex is dealt with in paragraph 12 below. Sub-paragraphs (g) and (h) deal with the administrative control which is to be exercised by the Organization over measures taken by a Member under this Article. The attention of the Working Party was particularly directed to ensuring that Members operating under sub-paragraphs (b) and (c) and Members operating under the Annex enjoyed equality of treatment in this respect. As a consequence, the Working Party felt it desirable in drafting these sub-paragraphs to take note of the procedures laid down in Article XIV of the Articles of Agreement of the International Monetary Fund.

After the termination of the transitional period for the Member in question any departure from the rule of non-discrimination is subject to the prior approval of the Organization, pursuant to the provisions of paragraph 2.

9. Paragraph 4 permits a Member applying import restrictions in accordance with Article 21 to control its exports in such a manner as to increase its earning of currencies which it can use without deviation from the provisions of Article 22.

10. The effect of the Amendment to paragraph 8 of Article 24 is that the measures defined in that paragraph are not precluded by the provisions of this Section of the Charter.

11. Paragraphs 3 and 5 of the revised draft are substantially the same as paragraphs 4 (a) and 5 respectively of the Geneva text of Article 23. Paragraph 5 (b) of the revised article incorporates an amendment which is a consequential change resulting from certain amendments to Annex A of Article 17 which have been approved by Committee III with reservation by the delegations of Brazil and Uruguay. (See E/CONF.2/C.3/59, page 17).

12. The Annex contains a substantial part of the provisions of the Geneva text of Article 23. Certain sections of that text have, however, been transferred to the Article proper and the declaration in sub-paragraph 1 (a) has been omitted. The procedures for administrative control by the Organization in sub-paragraph 3 (a) and 3 (c) in the Geneva text have been replaced by sub-paragraphs 1 (g) and 1 (h) of the Article. The criteria in sub-paragraph 1 (b) of the Geneva text remain the same.

13. It is considered by the Working Party that the above changes meet a large number of the objectives to which the amendments submitted were directed. In view of the extensive revision of Article 23 it is not

/practicable

practicable to indicate how particular amendments have been accommodated. However, the amendments submitted by the following countries are considered by the delegates of those countries to be covered by the new text:

(a) Belgium

(b) Czechoslovakia

Amendments to paragraphs 1 (a), 1 (b), 2, 3 (a), and 3 (c) are covered by Article 23 and the proposed amendment to paragraph 5 is covered by the proposed revision of paragraph 8 of Article 24.

(c) Denmark

(d) France

(e) Norway (amendment to paragraph 1 (b) (i))

(f) Lebanon

(g) Syria

14. The Norwegian delegate indicated that the new text of Article 93 on Relations with Non-Members, suggested by the delegation of Czechoslovakia and accepted by the Sub-Committee of the Sixth Committee (E/CONF.2/C.6/W.108) as a basis for discussion, met the major part of the problem to which his amendment on long-term agreements (E/CONF.2/C.3/F/W.4) was directed, and accordingly, withdrew this amendment.

15. With respect to the amendment submitted by Italy (Item 69) the Working Party considers that paragraph 2 of the revised text takes account of the concept of relative injury.

16. The delegate of Mexico has informed the Working Party that his delegation is now reviewing the new text to see whether the purpose of its amendment (Item 68) is met.

17. The amendment submitted by Greece proposing a new Article 23A (Item 78) was replaced by an amendment to paragraph 5 of Article 23 submitted to the Working Party by the delegate of Greece. After the new text of Article 23, together with the change proposed in Article 24, were before this Working Party, the delegate of Greece advised the Working Party that these new texts went a long way to meet the problem of his country. However, he did not feel that his point was met entirely, particularly in the post-transitional period. The Working Party believes that further amendment in this respect would provide too wide an exception, and therefore recommends no further change in the text. The delegate of Greece advised the Working Party that his delegation reserved its position.

/Article 23

Article 23

Exceptions to the Rule of Non-Discrimination

1 (a) The Members recognize that the aftermath of the war has brought difficult problems of economic adjustment which do not permit the immediate full achievement of non-discriminatory administration of quantitative restrictions and therefore require the exceptional transitional period arrangement set forth in this paragraph.

(b) A Member applying restrictions under Article 21 may, in the use of such restrictions, deviate from the provisions of Article 22 in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that Member may at that time apply under Article XIV of the Articles of Agreement of the International Monetary Fund, or under an analogous provision of a special exchange agreement pursuant to Article 24, paragraph 6.

(c) A Member applying restrictions under Article 21 and which was applying import restrictions to safeguard its balance of payments on 1 March 1948 in a manner which deviated from the rules of non-discrimination set forth in Article 22 may, to the extent that such deviation would not have been covered on that date by sub-paragraph (b) of this paragraph, continue so to deviate, and may adapt such deviation to changing circumstances.

(d) Any Member which before 1 July 1948 has signed the Protocol of Provisional Application agreed upon at Geneva on 30 October 1947, and which by such signature has provisionally accepted the principles of paragraph 1 of Article 23 of the Draft Charter submitted to the Havana Conference by the Preparatory Committee, may elect by written notice to the Interim Commission or to the Organization before 1 January 1949, to be governed by the provisions of Annex [ ], which embodies such principles, in lieu of the provisions of sub-paragraphs (b) and (c) of this paragraph. Annex [ ] shall not be applicable to any Member which does not so elect. Sub-paragraphs (b) and (c) of this paragraph shall not be applicable to any Member which does so elect.

(e) The policies applied in the use of import restrictions under sub-paragraphs (b) and (c) of this paragraph or Annex [ ] in the post-war transitional period shall be designed to promote the maximum development of multilateral trade possible during that period and to expedite the attainment of a balance of payments position which will no longer require resort to Article 21, or to transitional exchange arrangements.

/(f) A Member

(f) A Member may deviate from the provisions of Article 22 pursuant to sub-paragraphs (b) or (c) of this sub-paragraph or pursuant to Annex [ ] only so long as it is availing itself of the post-war transitional period arrangements under Article XIV of the Articles of Agreement of the International Monetary Fund, or under an analogous provision of a special exchange agreement under Article 24, paragraph 6.

(g) Not later than 1 March 1950 (three years after the date on which the International Monetary Fund began operations) and in each year thereafter, the Organization shall report on any action still being taken by Members under sub-paragraphs (b) and (c) of this paragraph or under Annex [ ]. On or about 1 March 1952, and in each year thereafter, any Member still entitled to take action under the provisions of sub-paragraph (c) or of Annex [ ] shall consult the Organization as to any deviations from Article 22 still in force pursuant to such provisions and as to its continued resort to such provisions. After 1 March 1952 any action under Annex [ ] going beyond the maintenance in force of deviations on which consultation has taken place and which the Organization has not found unjustifiable, or their adaptation to changing circumstances, shall be subject to any limitations of a general character which the Organization may prescribe in the light of the Member's circumstances.

(h) The Organization may, if it deems such action necessary in exceptional circumstances, make representations to any Member permitted to take action under the provisions of sub-paragraph (c) or of Annex [ ] that conditions are favourable for the termination of any particular deviation from the provisions of Article 22 or for the general abandonment of deviations, under the provisions of sub-paragraph (c) or, in the period after 1 March 1952, under Annex [ ]. The Member shall be given a suitable time to reply to such representations. If the Organization finds that the Member persists in unjustifiable deviation from the provisions of Article 22, the Member shall, within sixty days, limit or terminate such deviations as the Organization may specify.

2. Notwithstanding the termination of the Member's transitional period arrangement pursuant to sub-paragraph 1 (f) of this Article, a Member which is applying import restrictions under Article 21 may, with the consent of the Organization, temporarily deviate from the principles of Article 22 in respect of a small part of its trade where the benefits to the Member or Members concerned substantially outweigh any injury which may result to the trade of other Members.

/3. The provisions

3. The provisions of Article 22 shall not preclude restrictions in accordance with Article 21 which are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the International Monetary Fund on condition that such restrictions are in all other respects consistent with Article 22.

4. A Member applying import restrictions under Article 21 shall not be precluded by this Section from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from Article 22.

5. A Member shall not be precluded by this Section from applying quantitative restrictions:

(a) having equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund; or

(b) under the preferential arrangements provided for in Annex A of this Charter, pending the outcome of the negotiations referred to therein.

Interpretative Note to Paragraphs 1 - 4

It is recalled that since the provisions of paragraphs 1 - 4 of Article 23 apply only to Members operating restrictions under Article 21, the provisions of paragraph 5 of Article 21 apply also to action under paragraphs 1 - 4 of Article 23.

Interpretative Note to Paragraph 2 of Article 23

One of the situations contemplated in paragraph 2 is that of a Member holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

ANNEX [7]

(Applicable to Members who so elect, in accordance with paragraph 1 (d) of Article 23, in lieu of paragraphs 1 (b) and 1 (c) of Article 23.)

1. (a) A Member applying import restrictions under Article 21 may relax such restrictions in a manner which departs from the provisions of Article 22 to the extent necessary to obtain additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraphs 3 (a) and 3 (b) of Article 21 if its restrictions were fully consistent with Article 22; Provided that

(i) levels of delivered prices for products so imported are not established substantially higher than those ruling for comparable goods regularly available from other Members and that any excess of such price levels for products so imported is progressively reduced over a reasonable period;

(ii) the Member taking such action does not do so as part of any arrangement by which the gold or convertible currency which the Member currently receives directly or indirectly from its exports to other Members not party to the arrangement is appreciably reduced below the level it could otherwise have been reasonably expected to attain;

(iii) such action does not cause unnecessary damage to the commercial or economic interests of any other Member, including interests under Articles 3 and 9.

(b) Any Member taking action under this paragraph shall observe the principles of sub-paragraph (a) of this paragraph. A Member shall desist from transactions which prove to be inconsistent with that sub-paragraph but the Member shall not be required to satisfy itself, when it is not practicable to do so, that the requirements of that sub-paragraph are fulfilled in respect of individual transactions.

2. The provisions of Article 22 shall not preclude restrictions in accordance with Article 21 which assist, in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 22, another country whose economy has been disrupted by war,

3. Any Member taking action under paragraphs 1 or 2 of this Annex shall keep the Organization regularly informed regarding such action and shall provide such available relevant information as the Organization may request.

4. If at any time the Organization finds that import restrictions are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided for under paragraphs 1 or 2 of this Annex, the Member shall, within sixty days, remove the discrimination or modify it as specified by the Organization; Provided that any action under paragraphs

/1 or 2

1 or 2 of this Annex, to the extent that it has been approved by the Organization at the request of a Member under a procedure analogous to that of paragraph 5 (c) of Article 21, shall not be open to challenge under this paragraph or under paragraph 5 (d) of Article 21 on the ground that it is inconsistent with Article 22.

Interpretative Note to Annex

It is understood that the fact that a Member was operating under the provisions of Article 43 paragraph 1 (b) (i) does not preclude that Member from [obtaining additional imports] [operation] under this annex, but that the provisions of this Article (including its Annex) do not in any way limit the rights of Members under Article 43 paragraph 1 (b) (i).

Changes Proposed in Article 24

"[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 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."

Changes proposed in Interpretative Footnote to Article 24

[Paragraph 4.] Paragraph 8.

[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,] For example 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 license the country from which the goods might be imported for the purpose not of introducing any additional element of discrimination in its import licenses but of enforcing permissible exchange controls."

/Interpretative Note

Interpretative Note to Sub-Paragraph 1 (f) Suggested by the United Kingdom Delegation

The limitations of a general character which, under the last sentence of paragraph 1 (f), may be placed on and after 1 March 1952 on future deviations from Article 22, would not include limitations relating to individual commodities.

Note for Working Party Report - Suggested by the United Kingdom Delegation

It was agreed that the provisions of the last sentence of paragraph 1 (f) would not authorize the Organization to prescribe, as a "limitation of a general character", that a Member shall consult with the Organization prior to introducing deviations from the provisions of Article 22 which it would otherwise be permissible for the Member to introduce without such prior consultation.