

United Nations
CONFERENCE
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Nations Unies
CONFERENCE
DU
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RESTRICTED
E/GONF.2/C.3/F/
W.32/Corr.1
20 March 1948
ORIGINAL: ENGLISH

THIRD COMMITTEE: COMMERCIAL POLICY

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

CORRIGENDUM TO THE NOTES ON FOURTEENTH MEETING

Delete paragraph 3 and substitute the following:

"The representative of the United Kingdom suggested that the "war disrupted economies" clause be made applicable to countries selecting both options. The representative of the United States suggested that this amendment could be accomplished by reproducing paragraph 4 of the Geneva Draft Charter in its entirety as paragraph 3 of the text of the article and deleting paragraph 2 of the Annex. The suggestion of the United Kingdom was accepted in the drafting form proposed by the representative of the United States. Paragraph 3 was approved."

THIRD COMMITTEE: COMMERCIAL POLICY

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

DRAFT 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 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 73 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, while a substantial redraft of Article 23 is desirable, Members should, if they wish, have the opportunity of operating under the provisions of the Geneva text of Article 23 during the transition period as defined by reference to the provisions of Article XIV of the International Monetary Fund. The Working Party accordingly submits the text which appears at the end of this Report together with the interpretative note thereto and a proposed new 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 any Member may elect to operate during the transitional period either under sub-paragraphs (b) and (c) or under the Annex, in which the substance of paragraphs 1 to 3 of the Geneva text is reproduced. 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. 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 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

/13. The Norwegian

13. 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.

14. 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.

15. 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.

16. 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

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 15 February 1948 in a manner which deviated from the rules of

/non-discrimination

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. The Organization may, if it deems such action necessary in exceptional circumstances, make representations to any Member deviating from the provisions of Article 22 pursuant to this sub-paragraph that conditions are favourable for the termination of any particular deviation, or for the general termination of such deviations. The Member shall be given a suitable time to reply to such representations. If the Organization thereafter 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.

(a) Any Member may, prior to the time this Charter enters into force with respect to it, elect, by written notification to the Organization, to be governed by the provisions of Annex \square , in lieu of the provisions of sub-paragraphs (b) and (c) of this paragraph. Annex \square shall not authorize any deviations from the provisions of Article 22 by 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.

\square (d) (e) The policies applied in the use of import restrictions under sub-paragraphs (b) and (c) of this paragraph or pursuant to sub-paragraph (d) and Annex \square 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.

\square (e) (f) No Member shall deviate from the provisions of Article 22 pursuant to sub-paragraphs (b) or (c) of this sub-paragraph or pursuant to sub-paragraph (d) and Annex \square except during the post-war transitional period arrangement for that Member pursuant to Article XIV of the Articles of Agreement of the International Monetary Fund, or pursuant to an analogous provision of a special exchange agreement under Article 24, paragraph 6.

2. Notwithstanding the termination of the Member's transitional period arrangement pursuant to sub-paragraph 1 \square (e) (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

trade of other Members.

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 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.

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,

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 licences but of enforcing permissible exchange controls."

/ANNEX []

ANNEX 1 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) The Members recognize that when a substantial and widespread disequilibrium prevails in international trade and payments a Member applying restrictions under Article 21 may be able to increase its imports from certain sources without unduly depleting its monetary reserves, if permitted to depart from the provisions of Article 22. The Members also recognize the need for close limitation of such departures so as not to handicap achievement of multilateral international trade.
- (b) Accordingly, when a substantial and widespread disequilibrium prevails in international trade and payments 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 paragraph 2 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.
- (c) Any Member taking action under this paragraph shall observe the principles of sub-paragraph (b) 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

when it is not practicable to do so, that the requirements of that sub-paragraph are fulfilled in respect of individual transactions.

(d) Members undertake in framing and carrying out any programmes for additional imports under this paragraph to pay due regard to the need to facilitate the termination of any exchange arrangements which deviate from the obligations of Sections 2, 3 and 4 of Article VIII of the Articles of Agreement of the International Monetary Fund and to the need to restore equilibrium in their balances of payments on a sound and lasting basis.

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

3. (a) Not later than 1 March 1952 (five years after the date on which the International Monetary Fund began operations) and in each year thereafter, any Member maintaining or proposing to institute action under paragraph 1 of this Annex, shall seek the approval of the Organization, which shall thereupon determine whether the circumstances of the Member justify the maintenance or institution of action by it under paragraph 1 of this Annex. After 1 March 1952 no Member shall maintain or institute such action without determination by the Organization that the Member's circumstances justify the maintenance or institution of such action, as the case may be, and the subsequent maintenance or institution of such action by the Member shall be subject to any limitations which the Organization may prescribe for the purpose of ensuring compliance with the provisions of paragraph 1 of this Annex; Provided that the Organization shall not require that prior approval be obtained for individual transactions.

(b) 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 paragraph 1 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 paragraph 1 of this Annex, to the extent that it has been approved by the Organization under sub-paragraph (a) of this paragraph or 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 4 5 (c) of Article 21, shall not be open to challenge under this sub-paragraph or under paragraph 4 5 (d) of Article 21

/on the ground

on the ground that it is inconsistent with Article 22.

(c) Not later than 1 March 1950, and in each year thereafter so long as any Members are taking action under paragraph 1 of this Annex, the Organization shall report on the action still taken by Members under that paragraph. On or about 1 March 1952, and in each year thereafter so long as any Members are taking action under paragraph 1 of this Annex, and at such times thereafter as the Organization may decide, the Organization shall review the question of whether there then exists such a substantial and widespread disequilibrium in international trade and payments as to justify resort to paragraph 1 of this Annex by Members. If it appears at any date prior to 1 March 1952 that there has been a substantial and general improvement in international trade and payments, the Organization may review the situation at that date. If, as a result of any such review, the Organization determines that no such disequilibrium exists, the provisions of paragraph 1 of this Annex shall be suspended, and all actions authorized thereunder shall cease six months after such determination.

Interpretative Note to Annex

It is understood that a Member operating in accordance with the provisions of Article 43 (b) (1) would not be precluded from operation under this Annex.

13 March 1948

PROPOSAL BY THE UNITED STATES DELEGATION

Article 23Exceptions to the Rule of Non-discrimination

1. (a) The Members recognize that the aftermath of the war has brought difficult problems to 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 15 February 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. The Organization may, if it deems such action necessary in exceptional circumstances, make representations to any Member deviating from the provisions of Article 22 pursuant to this sub-paragraph that conditions are favourable for the termination of any particular deviation, or for the general termination of such deviations. The Member shall be given a suitable time to reply to such representations. If the Organization thereafter 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.
- (d) Any Member which before 1 July 1948 has signed the Protocol of Provisional Application agreed upon at Geneva on 30 October 1947, and has thereby 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 Secretary of the Interim Commission before [1 July 1948]

[1 January 1949] [this Charter enters into force with respect to it] to be governed by the provisions of Annex []. Annex [] shall not authorize any deviations from the provisions of Article 22 by 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 pursuant to sub-paragraph (d) and 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) No Member shall deviate from the provisions of Article 22 pursuant to sub-paragraphs (b) or (c) of this paragraph or pursuant to sub-paragraph (d) and Annex [] except during the post-war transitional period arrangement for that Member pursuant to Article XIV of the Articles of Agreement of the International Monetary Fund, or pursuant to 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 this paragraph or under Annex []. On or about 1 March 1952, and in each year thereafter, any Member still permitted to take action under this paragraph or under Annex [] shall consult the Organization as to any deviations from Article 22 still in force pursuant to the provisions of this paragraph or Annex [] and its need for any further resort to such provisions. Thereafter, any action under this paragraph or Annex [] going beyond the maintenance in force of deviations on which consultation has taken place and of which the Organization has not disapproved, or their adaptation to changing circumstances, shall be subject to such general limitations as the Organization may prescribe in the light of the Member's circumstances; /provided that

provided that the Organization shall not require that prior approval be obtained for individual transactions.

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 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 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.

/AIRTEX

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 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 paragraph 2 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.
 - (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

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 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 I (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 I (b) (i).

THIRD COMMITTEE: COMMERCIAL POLICY

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

REVISED DRAFT 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

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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, while a substantial redraft of Article 23 is desirable, Members should if they wish have the opportunity of operating during the transitional period as defined below in paragraph 6 in accordance with the principles of Article 23 of the Geneva text. 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

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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 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.

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.

SUB-COMMITTEE F OF COMMITTEE III

WORKING PARTY I ON ARTICLE 21

Belgian Redraft of the Redraft of Proposed Amendment to
Article 21 Suggested by the Delegate of the United Kingdom

- 1 (a) Members recognize
 - (i)
 - (ii)
 - (iii)
 - (iv) that it lies within the purview of the Organization to promote and facilitate such mutual consultations and agreed action.
- (b) The Organization shall be guided in its action taken under Articles 21 to 24 by the principles set forth in sub-paragraph (a) of this section.

Working Group 21 - 3

SUB-COMMITTEE F OF COMMITTEE III

WORKING PARTY I ON ARTICLE 21

Suggestion by the Delegation of the United Kingdom

- 4 (e) (i) In consultations between a Member and the Organization under this paragraph there shall be full and free discussion and expression of opinions as to the causes and nature of the Member's balance-of-payments difficulties; except that no Member shall be required in the course of consultations under sub-paragraphs (a) or (c) to indicate in advance the choice or timing of any particular measure which it may ultimately determine to adopt.
- (ii) (As in present paragraph 4 (e)).

(A consequential amendment would delete the last sentence of paragraph 4 (a), which is included in the above amendment).

Working Group 21 - 2.

THIRD COMMITTEE: COMMERCIAL POLICY
SUB-COMMITTEE F (ARTICLES 21, 23 AND 24)
WORKING PARTY I ON ARTICLE 21
THIRD REDRAFT OF PROPOSED BELGIAN AMENDMENT

- I (a) 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, particularly if it results in the imposition by the Member, for the purpose of safeguarding its external financial position, 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 balances of payments;
 - (iv) action taken to restore stable equilibrium in the balance of payments should so far as possible employ methods which expand rather than contract international trade.
- (b) The principles set forth in sub-paragraph (a) of this paragraph shall guide the Organization in action taken under the relevant provisions of this Article and Articles 23 and 24.

Working Party 21/5.

THIRD COMMITTEE: COMMERCIAL POLICY
SUB-COMMITTEE F (ARTICLES 21, 23 AND 24)
SEVENTH MEETING

STATEMENT BY THE DELEGATE OF CZECHOSLOVAKIA ON
CZECHOSLOVAK AMENDMENT TO ARTICLE 23 (Doc. C.3/F/W.14)

The reasons why the Czechoslovak Delegation made a reservation with regard to the present draft of Article 23 were already explained in the statement made by the head of our Delegation before the Full Committee, and I do not think it necessary to repeat all of them here. A fairly good description of dangers hidden in the provisions of this Article were already presented in the Sub-Committee by different Delegations. We associate ourselves with the main ideas and arguments contained therein.

Furthermore, we wish to point out that we attach the utmost importance to the purposes as stated in the Article 1, paragraph 1 which are "to assure a large and steadily growing volume of real income and effective demand to increase the production, consumption and exchange of goods and thus to contribute to a balanced and expanding world economy." We think that this purpose may be best attained under conditions which may be generally described as normal or balance, that is to say, when there are no obstacles to free movement of goods, capital, persons and at the same time under such monetary conditions as permit the free convertibility of almost all currencies.

But as long as there are obstacles to the free flow of capital, as well as to the free migration of persons, and as long as a world monetary equilibrium has not been reestablished, we do not believe that the principles of unlimited and unconditional multilateral trade are attainable and can serve the above mentioned purposes of the Charter as expressed in paragraph 1, Article 1. We feel therefore that this fact is one of the basic reasons for the possibility of discrimination as formulated in Article 23. But the crucial points, in our opinion, are the criteria which are to govern this Article.

In the present draft the fact is recognized that the monetary disequil-

ilibrium in the world has a disastrous effect upon the volume of trade based upon principles of multilaterality. Therefore, the Article in general aims to achieve the goal of restoring a world balanced currency system. But it is not recognized that some exemptions should be made to meet the difficulties arising from the facts that there is no free flow of capital, that there is no free migration of people, and that is what we consider as a fundamental defect of the whole construction of Article 23. It is true that under the principle of multilateral trade and division of labour some goods could be better and perhaps more cheaply produced in certain countries, but as long as there are political frontiers and as long as there are also other than economic considerations, which prevent the free movement of capital and persons, it is apparent that in certain countries industries will work overtime which, of course, in other countries will result in heavy unemployment. Furthermore, there is, of course, the unequal distribution of national wealth and of capital equipment per capita of labour which makes it rather difficult for certain countries to accept the rule of unlimited free competition. We feel that in this Article which deals with the exceptions to the rule of non-discrimination, there should be some provisions which will take such factors into consideration and will thus bring the draft closer to reality.

We tried to embody these ideas in a redraft of Article 23 which departs from the Geneva Draft in the following points:

1. In the Geneva Draft we find in paragraph 1 (a) that one of the basic conditions under which this Article may be applied is a state of "substantial and widespread disequilibrium in international trade and payments". The definition of substantial and widespread disequilibrium is not a very easy one and under specific conditions it may be extremely difficult to find an exact borderline between substantial and widespread disequilibrium and between disequilibrium which does not give the right to impose restriction under Article 23. Let us take an example: there are two States both in balance of payments difficulties, countries A and

/B, and country

B, and country A depends for 70-80% of its total volume of foreign trade on country B, while 20% of its trade goes to countries which are not in balance of payments difficulties. Will the country A have the right to resort to the provisions of this Article, It seems to me that country A may be under more difficult conditions even if there is not a widespread and substantial disequilibrium, as compared to the present state of another country which may have the right to resort to these provisions because there is a widespread and substantial disequilibrium although, let us say, only 60% of its foreign trade goes to countries in balance of payments difficulties. It is not only just but also quite logical to give to country A, which is so widely dependent in its foreign trade on a country in balance of payments difficulties, the right to resort to the provisions of Article 23. I am not sure whether this would be possible under the present wording of this Article and I rather think that this case is not covered. In our proposal we have, therefore, removed this condition and we have also eliminated the criterion that a country must fall under the provisions of Article 21. For the same reasons we have removed the sentence from paragraph 1 (b) as well as from paragraph 3 (c).

2. In paragraph 1 (b) we are faced with another and more serious difficulty. the present wording of this paragraph has, I think, two practical consequences:

(a) It permits the consumption by additional imports of old credit balances accumulated in the soft currency countries during the period before the Charter may enter into force, but I do not see any larger possibility of any additional export to these countries, except the possibility of exporting goods which could not be sold in countries with hard currencies, although additional exports of all goods must not be, under all conditions, harmful to the principle of expansion of foreign trade and may fairly well serve the purpose of increasing employment in the exporting country. To meet this difficulty we

/propose to remove

propose to remove the second part of this paragraph and to replace it by the qualification of high volume of trade and employment in combination with the deletion of sub-paragraphs 1 and 2. I think that this is a more realistic approach because no country can ignore in such a manner all traditional relations in its trade and try to sell to these countries only goods of inferior quality, while the goods of the first class quality are to be directed mainly to the hard currency countries. We have to consider this question from the point of view of the effect on the whole structure of the balance of payments of such a country. We may very easily come to the conclusion that the final effect will be that the structure of the balance of payments will improve in the sense that a larger part will relate to the countries with hard currencies and a smaller part to the countries with soft currencies in comparison with a previous period. But it seems to me that the total figure of the volume of trade may be substantially reduced. This reduction may be then followed in the respective countries with all the adverse effects of a reduction in foreign trade.

Let us take an example: Country A is a hard currency country and countries B, C, D, are soft currency countries. Country B uses to export to countries C, D, steel which was bound with deliveries of let us say, apples or jewelry or another non-essential product from country B to countries C and D. Let us assume that the steel, subject to paragraph (b) would be easily sold to country A, but country A would not take the apples, the jewelry or other non-essential products. Would it be possible that these apples or jewelry without simultaneous deliveries of steel could be sold to countries C and D even if these countries have an inconvertible currency? We have also some products of this kind which we cannot sell in hard currency countries and which we are able to sell to soft currency countries only under the condition that we sell to these countries

/also goods which

also goods which we could otherwise sell to the countries with hard currencies. On the other hand, we take from these countries non-essential goods in order to obtain certain essential goods too. It seems to me that if we accept the provisions of this paragraph in their present form, the consequence will be a cut in the mutual exchange of non-essential goods and thus the reduction of the volume of trade between these countries.

(b) It seems to me that in this paragraph insufficient attention is paid to the fact that many new agreements on payments between soft currency countries provide for the settlement of balances above a certain limit in hard currencies or in gold. I think that this provision removes many fears that additional exports to these countries will lead to new frozen balances. If I understood correctly the meaning of the amendments of the French and recently of the Belgian Delegation, it seems to me that they were faced with the same difficulties and I really doubt whether they were going far enough in this direction and whether their amendments remove all the dangers which are hidden behind the provisions in the present wording and which can hardly be explored purely in a speculative way. Life is sometimes too complex and brings new aspects which cannot be always foreseen, and I think that if we try to put down a very rigid rule we shall create many unintended effects, some of which the representative of the United Kingdom referred to. Some others are underlined by the Norwegian amendment relating to long-term contracts. These contracts are a necessity in the present state of trade in Europe and I wish to stress the correctness of the analysis which led the Norwegian Delegation to the submission of its amendment. But I wonder whether all these exceptions can be covered by special provisions instead of a more general formula which may be more flexible and cover all these possibilities at once.

We see a

(c) We see a further difficulty in sub-paragraph 1 (b). These provisions cover two main problems:

- 1) The problem of relative prices in mutual deliveries between two countries dealing under the provisions of Article 23. The Norwegian Delegation has raised this question already and I think that this problem should be covered by this article too.
- 2) The basic idea itself, namely the reduction of the price level in countries with soft currencies in relation to world prices; that is to say, to price levels in countries with hard currencies. First of all, it seems to me that the price level is a reverse picture of purchasing power of the currency unit, and because in countries with soft currencies the par values do not necessarily correspond to the purchasing power of the respective currencies we are faced with the fact that we have different and independent price levels in countries with soft currencies (independent because it is not possible to use a favourable balance in one soft currency country to cover an unfavourable balance with another soft currency country).

The present draft of sub-paragraph 1 (b) (i) presumes that the prices are one of the items of the bilateral trade agreements, but this is not so in the majority of cases. Usually only the volumes of exchanged goods are agreed upon without an indication of the prices. The prices are subject to individual dealing between the exporters and importers of the respective countries. Can a country undergo an obligation that its businessman will not accept higher prices in certain relations than in other relations?

Let us take an example: The soft currency countries are producing some agricultural product which is produced in the hard currency countries as well. The prices differ from a

/base period by

base period by 10% in the soft currency country C, 15% in soft currency country D and 20% in soft currency country E. The next year there is a very bad harvest in these countries and on the other hand the harvest in hard currency countries is a very good one. The result of these different harvests will be that the prices in hard currency countries will fall by 10% and the prices in the soft currency countries will rise by a certain percentage which is different for each of these countries, so that the result may be that the prices in country C are now 35%, in country D 45%, and in E 60% over the prices in the hard currency countries. In my opinion the effect of the provision of the present wording will be that no such products may be imported from these countries and because on the other hand, the exports to these countries from country A are not touched, it follows that balances will accumulate in favour of Country A. With respect to the valid payment agreements, these countries are obliged to settle these balances over a certain limit in gold or hard currencies. There is no doubt that this is possible under the present circumstances only to a very limited extent and if this possibility is exhausted, the result will be the freezing of balances and a decrease in volume of trade, employment and so on.

I think that it is in the interest of every country to pay as low a price for the imported goods as possible and that no provision is necessary in the Charter to enforce this because when it is possible the country will do so without such a provision and when it is not possible, and the country needs to maintain its commercial and other relations with a country under the conditions that it is necessary to pay a certain price, the country will only very reluctantly fulfil any provision prohibiting it from doing so. The control of the fulfillment of such obligations is beyond doubt a very difficult one, if not impossible.

/The last substantial

Page 8.

The last substantial change in our redraft is the deletion of two lines in paragraph 5 (a) starting with the word "exchange". The reason for this amendment is that the Articles of Agreement of the International Monetary Fund impose on the Members several obligations on one side and, on the other, give them certain rights. One of the most important rights under these articles for the war devastated countries are contained in Article XIV, under which these countries are entitled to impose exchange restrictions, which have the same effect as quantitative restrictions. We do not intend to lose these rights under the provisions of the Charter because these rights made it possible for us to accept the IMF Agreement. The other changes are the consequence of the redraft of paragraph 1.

THIRD COMMITTEE: COMMERCIAL POLICY

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

STATEMENT MADE BY THE UNITED STATES DELEGATE AT THE
EIGHTH MEETING ON THE PROPOSED NORWEGIAN AMENDMENT TO
ARTICLE 23

The Norwegian delegation has proposed an amendment to Article 23 to add a new sub-paragraph to paragraph 5 to provide an exemption from the rule of non-discrimination for long-term purchase agreements entered into by governments. This proposal has been justified as necessary to make the rules applicable to private enterprise the same as those applicable to state trading monopolies under the Charter. It has also been defended on the ground that it introduces a desirable element of stability into trade.

The United States delegation yesterday stated that it opposed this amendment but did not give its reasons in detail. It wishes at this time to give a brief statement of its reasons for opposing the amendment.

In the first place, the United States delegation considers that the arguments used in support of this amendment involve a circular chain of reasoning which results in a reversal of the basic principle of Article 30 in the State Trading Section. The basic rule established in Article 30 is that enterprises which have been given monopoly or other special privileges by the State shall follow the rule of non-discrimination as between Member countries in their transactions affecting international trade. This rule is made more specific by the criterion that such transactions must be made in accordance with commercial considerations. Thus, a long-term purchase contract made by such an enterprise would be in violation of Article 30 if it is not the kind of contract which a private enterprise would have made under the same circumstances.

From this rule, the argument for the amendment concludes that a Government should be permitted to require its private traders to take action which is permitted in the case of a state trading enterprise. Since Article 30 requires a state trading enterprise to act in the way that a private enterprise would without governmental compulsion, it is completely illogical to introduce compulsion on private enterprise to force it to act as we have already assumed it would act in the absence of compulsion; that is, according to commercial considerations.

To summarize this argument: any rule imposed by a government which would require an enterprise to trade within a given area or at a given price must necessarily establish a departure from the principle which Article 30 establishes for state enterprises.

/The purpose

The purpose of Article 30 is to place on Members maintaining state enterprises obligations as nearly as possible parallel with the obligations placed on governments which do not maintain such enterprises. Any relaxation of the rule against non-discrimination, therefore, must be considered on its merits and not on the grounds that it is required to restore a balance between these obligations.

On the merits, we must also oppose the amendment. Nothing in the Charter prevents individual private enterprises, acting as we assume they do, on "commercial considerations", from making long or short term arrangements as they judge best. In a limited field, we have agreed in Chapter VI on a procedure of inter-governmental commodity agreements. To accept the Norwegian amendment would mean the opening wide of the careful limitations written into Chapter VI, after consideration of the desirable limits on inter-governmental regulation of private trade.

In addition, the Norwegian amendment would provide a comprehensive escape clause for bilateral inter-governmental trade arrangements which would render meaningless the careful limitations on bilateralism written into Article 23 at Geneva. This amendment would permit any two countries, whether or not involved in conditions of financial stringency, to regulate all their trade by bilateral agreement, provided only that the Organization could not say that one or the other country accepted a bad bargain from its own point of view.
