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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

REPORT OF THE JOINT DRAFTING SUB-COMMITTEE
OF COMMITTEES II AND IV
ON SUBSIDIES ON PRIMARY PRODUCTS

PART I

The Sub-Committee included Delegates for China, Czechoslovakia, New Zealand, the United Kingdom and the United States of America. It met twice under the chairmanship of Mr. MCCARTHY (Australia). Mr. SCHWENGER (United States) functioned as rapporteur.

PART II

1. In general the intention of Article 25 of the United States Draft Charter is to give members whose interests are prejudiced by subsidization the right to a full international consideration of their case, to oblige subsidizing members to participate in such consideration and to provide for limiting subsidization so that its prejudicial effects may be reduced.
2. As concerns primary products, the Article recognizes that, when trade is distorted by the special difficulties which make necessary the provisions of Chapter VI, the procedures of that Chapter rather than those of this Article should apply.
3. In view of the fact that export subsidies are recognized as being more likely to distort trade than so-called "domestic" subsidies, the Article looks toward the early elimination of the former in most cases but merely to the limitation of the latter. Nevertheless, it is emphasized that the Article envisages gradual rather than sudden modifications of subsidies in cases where such modification calls for substantial economic and social adjustment in the affected member countries.
4. The following changes are proposed in Article 25 of the Draft Charter:
 - (a) Wherever the Charter has words such as "injury to the trade of a member"; it is proposed to say "prejudice to the interest of a member". It is felt that this wording will in practice facilitate application.
 - (b) The word "limiting" in the last sentence of paragraph 1 is used in a broad sense to indicate maintaining the

subsidization at as low a level as possible, and the gradual reduction in subsidization over a period of time where this is appropriate.

(c) The words added at the end of the second sentence of paragraph 2 are designed to make it clear that payments to producers from the proceeds of domestic taxes from which export products are exempted are looked upon as "domestic" rather than export subsidies. The added words, and the sentence to which they are attached, are essentially explanatory of part of the first sentence of paragraph 2.

(d) The substitution of the phrase "a complete analysis of the practices in question and the facts justifying them" for the words "an explanatory statement", in the fourth sentence of paragraph 2 is associated with a discussion of possible results of the determination mentioned in the following sentence. It was felt that under certain circumstances some export subsidies might be justified as being consistent with the objectives of the Charter.

(e) It is suggested that the Drafting Committee consider whether it is necessary to retain the cross reference clauses beginning, "Except as provided" at the beginning of paragraph 1.

(f) It was considered whether the words "the like product" in the first sentence of paragraph 2 could be construed in such a way as to permit escaping the provisions of this paragraph in cases when the exported product differs slightly from a product sold in the domestic market. It was decided, however, that this would be a case falling under the terms of Article 30 and thus that the measure, whether or not

in conflict with the terms of Chapter IV of the Suggested Charter, would imply nullification or impairment of the Charter. The subsidizing member would, therefore, be obliged to give sympathetic consideration to the views of other interested members and, assuming good faith, the problem could probably be solved. The implications of qualifying words, such as "the like or similar product", might be considered by the Drafting Committee.

(g) The new paragraph 3 would render it possible for interested members, in consultation with the Organization, to operate a domestic stabilization scheme for a primary product if the stabilized domestic price is at times below the export price and if, through effective production controls or otherwise, the scheme operated so as not to prejudice the interest of members. Some delegations thought that this was implicit in paragraph 2 and that the explicit exemption under paragraph 2 might render it more difficult to apply paragraph 2 so as to cover other legitimate exceptions. Accordingly empty square brackets were added at the end of the new paragraph to indicate that suggestions may be forthcoming to cover other exceptional cases.

(h) The new sub-paragraph (a) of the renumbered paragraph 4 indicates that the consultative procedure of Chapter VI with reference to primary products in the case of which special difficulties may arise may be applied when subsidies on such products call for determination by consultation under the terms of paragraph 1 or 2. In this connection and in relation to the provisions of the original paragraph 3 of the Draft Charter, it is suggested that the Drafting Committee

considers Article 25 in connection with Chapter VI and with Article 55, paragraph 6, with a view to simplifying the texts in question. They are intended to provide:

- (1) a uniform type of consultative procedure for dealing with primary commodities in the case of which special difficulties may arise either in the initial period of transition or thereafter, and
- (2) an adequate consultative procedure for dealing with non-primary products according to the general intentions of Article 25 expressed in the opening sentence of this report.

(i) One delegation announced that it would reserve its position regarding the provisions of sub-paragraphs (b) and (c) of (the renumbered) paragraph 4.

(j) One delegation expressed the opinion that the Interim Draft Committee should consider the provisions in Article 11 of the United States Charter in connection with Article 25. It felt specially that Article 11 should, in about the same way as paragraph 2 (a) of Article 19 does for quotas, provide for the legitimation of subsidies, if these were accepted after consultation by interested members.

APPENDIX

Article 25. General Undertaking Regarding Subsidies - Elimination of Export Subsidies - Exceptions

1. Except as provided in paragraphs 2 and 4 of this Article, if any member establishes or maintains any subsidy, including any form of income or price support, to the domestic producers of any product, which operates to increase the exports of such product from, or to reduce the imports of such product into, the territory of the member, such member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the anticipated effect of the subsidization on the quantity of the product imported into and exported from the territory of the member, and as to the conditions making the subsidization necessary. In any case in which it is determined that serious prejudice to the interest of any member is caused or threatened by the operation of any such subsidization, the member granting such subsidization shall undertake to discuss with the other member or members concerned, or with the Organization, the possibility of limiting the subsidization.
2. Except as provided in paragraph 4 of this Article, no member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain any other system which results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability. The preceding sentence shall not be construed to prevent any member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically or from remitting such duties or taxes

which have accrued; the use of the proceeds of such duties or taxes to make payments to domestic producers would be considered as a case under paragraph 1 of this Article. Members shall give effect to the provisions of this paragraph at the earliest practicable date, but in any event not later than three years from the day on which this Charter enters into force. If any member considers itself unable to make the provisions of this paragraph effective in respect of any specified product or products upon the expiration of such period, such member shall, at least three months before the expiration of such period, give to the Organization a notice in writing to that effect, accompanied by a complete analysis of the practices in question and the facts justifying them and an indication as to the extension of the period desired. It shall then be determined whether such period should be extended for the member desiring an extension in respect of the product or products concerned.

3. A system for the stabilization of the domestic price of a primary product, which sometimes results in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, may be determined by the Organization not to be a subsidy on exportation under the terms of paragraph 2 of this Article if it has at times resulted in the sale of the product for export at a price higher than the comparable price charged for the like product to domestic buyers and if the system is so operated, either because of the effective limitation of production or otherwise, as not to unduly stimulate exports or otherwise seriously prejudice the interest of other members.

4. (a) In any case of subsidization of a primary commodity, whether falling under paragraph 1 or paragraph 2 of this Article, if a member considers that its interest is seriously prejudiced by the subsidy or if the member granting the subsidy considers

itself unable to comply with the provisions of paragraph 2 within the time limit laid down therein, the difficulty may be deemed to be a special difficulty of the kind referred to in Chapter VI, and in that event, the procedure laid down in that Chapter shall be followed.

(b) If it is determined that the measures provided for in subparagraph (a) of this paragraph have not succeeded, or do not promise to succeed, within a reasonable period of time, in removing, or preventing the development of, a burdensome world surplus of the primary product concerned, the requirements of paragraphs 1 and 2 of this Article shall cease to apply in respect of such product as of the effective date of such determination and shall not be re-applied in respect of such product until a date determined in accordance with procedures approved by the Organization.

(c) Notwithstanding the provisions of paragraphs 2 and 4 (b) of this Article, no member shall grant any subsidy on the exportation of any primary product which has the effect of acquiring for that member a share of world trade in that product in excess of the share which it had during a previous representative period, account being taken insofar as practicable of any special factors which may have affected or may be affecting the trade in that product. The selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the member granting the subsidy; Provided, That such member shall, upon the request of any other member having an important interest in the trade in that product, or upon the request of the Organization, consult promptly with the other member or with the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.

5. Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with Article 55:6.