

PREPARATORY COMMITTEE OF THE UNITED NATIONS CONFERENCE
ON TRADE AND EMPLOYMENT

DRAFTING COMMITTEE

LEGAL DRAFTING SUB-COMMITTEE

WORKING PAPER PREPARED BY THE SECRETARIAT

PART I

TEXT OF ARTICLES ACCEPTED BY THE DRAFTING COMMITTEE
AT SECOND READING

SECTION B - TARIFFS AND TARIFF PREFERENCES

Article 24

Reduction of Tariffs and Elimination of Preferences

1. Each Member, other than a Member subject to the provisions of Article 33, shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Member or Members directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of import tariff preferences. These negotiations shall proceed in accordance with the following rules:

(a) Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification or termination of existing international obligations, except by agreement between the contracting parties or, failing that, by termination of such obligations in accordance with their terms.

(b) All negotiated reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of

/preference

preference and no margins of preference shall be increased.

(c) The binding or consolidation of low tariffs or of tariff-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

2. Each Member participating in negotiations pursuant to paragraph 1 shall keep the Organization informed of the progress thereof and shall transmit to the Organization a copy of the agreement or agreements incorporating the results of such negotiations.

3. If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1, such Member may refer the matter to the Organization, which shall make an investigation and make appropriate recommendations to the Members concerned. The Organization, if it finds that a Member has, without sufficient justification, having regard to the provisions of the Charter as a whole, failed to negotiate with such complaining Member in accordance with the requirements of paragraph 1, may determine that the complaining Member, or in exceptional cases the Members of the Organization generally, shall, notwithstanding the provisions of Article 14, be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member, or the Members of the Organization generally as the case may be, may have negotiated pursuant to paragraph 1. If such benefits are in fact withheld so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free; within sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. The provisions of this paragraph shall operate in accordance with the provisions of Article 67.

SECTION C. QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROL

Article 25

General Elimination of Quantitative Restrictions

1. Except as otherwise provided in this Charter, no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import licences or other measures, shall be imposed or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export, of any product destined for any other Member country.
2. The provisions of paragraph 1 shall not extend to the following:
 - (a) Prohibitions or restrictions on imports or exports imposed or maintained during the early post-war transitional period, which are essential to
 - (i) the equitable distribution among the several consuming countries of products in short supply, whether such products are owned by private interests or by the government of any Member;
 - (ii) the maintenance of war-time price control by a country undergoing shortages subsequent to the war;
 - (iii) the orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member or of industries developed in the territory of any Member owing to the exigencies of the war, which it would be uneconomic to maintain in normal conditions

PROVIDED THAT restrictions for this purpose may not be instituted by any Member after the date on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action. Import and export prohibitions and restrictions imposed or maintained under this sub-paragraph shall

/be removed

be removed as soon as the conditions giving rise to them have ceased, and in any event, not later than 1 July 1949.

PROVIDED THAT this period may, with the concurrence of the Organization, be extended in respect of any product for further periods not to exceed six months each.

(b) Export prohibitions or restrictions temporarily imposed to relieve critical shortages of foodstuffs or other essential products in the exporting country.

(c) Import and export prohibitions or restrictions necessary to the application of standards for the classification and grading of commodities in international commerce. If, in the opinion of the Organization, the standards adopted by a Member under this sub-paragraph are likely to have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards

PROVIDED THAT it shall not request the revision of standards internationally agreed under paragraph 6 of Article 22.

(d) Export or import quotas imposed under inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VII.

(e) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced; or

(ii) to remove a temporary surplus of the like domestic product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level.

/(f) Any Member

(f) Any Member imposing restrictions on the importation of any product pursuant to sub-paragraph (e) shall give public notice of the total quantity or value of the product permitted to be imported during a specified period and of any change in such quantity or value PROVIDED that any supplies of the product in question, which were en route at the time at which public notice was given, shall not be excluded but may be counted, so far as practicable, against the quantity permitted to be imported in the period in question. Moreover, any restrictions imposed under (i) of sub-paragraph (e) shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of the restrictions. In determining this proportion the Member shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned. The Member shall consult with any other Members which are interested in the trade in question and which wish to initiate such consultations.

(g) Import and export prohibitions or restrictions imposed on private trade for the purpose of establishing a new, or maintaining an existing monopoly of trade for a state-trading enterprise operated under Articles 31, 32 and 33.

Article 26

Restrictions to Safeguard the Balance of payments

1. Members may need to use import restrictions as a means of safeguarding their external financial position or as a step toward the restoration of equilibrium in their balance of payments on a sound and lasting basis, particularly in view of their increased demand for imports needed to carry out their domestic employment, reconstruction, development or social policies. Accordingly, notwithstanding the provisions of Article 25, any Member may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard its balance of payments or monetary reserves.

2. The use of import restrictions under paragraph 1 shall be subject to the following requirements:

(a) No Member shall impose new restrictions or intensify existing restrictions except to the extent necessary to stop or to forestall the imminent threat of a serious decline in the level of its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves, due allowance being made in each case for any special factors which may be affecting the level of the Member's reserves, for any commitments or other circumstances which may be affecting its need for reserves, and for any special credits or other resources which may be available to protect its reserves.

(b) Members shall eliminate the restrictions when conditions would no longer justify the imposition of new restrictions under sub-paragraph (a), and shall relax them progressively as such conditions are approached.

(c) Members shall not apply the restrictions in such a manner as to exclude completely imports of any class of goods.

/3. (a) Any Member

3. (a) Any Member which is not maintaining restrictions under paragraphs 1 and 2 but which is considering the need for their imposition, shall, before imposing such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the imposition of such restrictions) consult with the Organization as to the nature of its balance-of-payments difficulties, the various corrective measures which may be available, and the possible effects of such measures on the economies of other Members. The Organization shall invite the International Monetary Fund to participate in the consultations. No Member shall be required during such discussions to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt.

(b) The Organization may at any time invite any Member applying import restrictions under paragraphs 1 and 2 to consult with it about the form or extent of the restrictions, and shall invite a Member substantially intensifying such restrictions to consult accordingly within thirty days. Members thus invited shall participate in such discussions. In the conduct of such discussions the Organization shall consult the International Monetary Fund and any other appropriate inter-governmental organizations, in particular with regard to the alternative methods available to the Member in question of meeting its balance-of-payments difficulties. The Organization shall, not later than two years from the day on which this Charter enters into force, review all restrictions existing on that day and still maintained under paragraphs 1 and 2 at the time of the review.

/ (c) Any Member

(c) Any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes, under paragraphs 1 and 2 to maintain, intensify or impose, or for the maintenance, intensification or imposition of restrictions under specified future conditions. The Organization shall invite the International Monetary Fund to participate in the consultations. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or imposition of restrictions by the Member in question insofar as the general extent, degree and duration of the restrictions are concerned. To the extent to which such approval has been given, the action of the Member applying restrictions shall not be open to challenge under sub-paragraph (d), on the ground that such action is inconsistent with the provisions of paragraphs 1 and 2.

(d) Any Member, which considers that any other Member is applying import restrictions under paragraphs 1 and 2 in a manner inconsistent with the provisions of those paragraphs or of Articles 27 and 28, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organization. The Member applying the restrictions shall then participate in discussions of the reasons for its action. The Organization shall, if it is satisfied that there is a prima facie case that the complaining Member's interests are adversely affected, consider the complaint. It may then, after consultation with the International Monetary Fund on any matter falling within the competence of the Fund, and, if it considers desirable, after submitting observations to both parties with the aim of achieving a satisfactory settlement of the matter in question, recommend the withdrawal or modification

/of restrictions

of restrictions which it determines are being applied in a manner inconsistent with the provisions of paragraphs 1 and 2 or of Articles 27 or 28 or in a manner which unnecessarily damages the interests of another Member. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Member shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

(e) The Organization, in reaching its decision under sub-paragraph (d) shall not recommend the withdrawal or general relaxation of restrictions on the ground that the existing or prospective balance-of-payments difficulties of the Member in question could be avoided by a change in that Member's domestic employment, reconstruction, development or social policies. In carrying out such domestic policies, however, Members shall pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis.

4. In giving effect to the restrictions on imports under this Article, a Member may select imports for restriction on the grounds of the essentiality of other imports to essentiality in such a way as to give priority to imports required by its domestic employment, reconstruction, development or social policies and programmes. In so doing the Member shall avoid all unnecessary damage to the commercial interests of other Members.

5. If there is persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall seek consultation with the International Monetary Fund. The Organization may then, in collaboration throughout with the Fund, initiate discussions to consider whether other measures might not be taken, either by those

/countries

countries whose balances of payments are under pressure or by those countries whose balances of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental agency or organization to remove the underlying causes of the disequilibrium. On the invitation of the Organization Members shall participate in such discussions.

6. Throughout this Section the phrase "import restrictions" includes the restriction of imports by state-trading organizations to an extent greater than that which would be permissible under Article 32.

7. Members recognize that in the early years of the Organization all of them will be confronted, in varying degrees, by problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this Article or under Article 28, take full account of the difficulties of post-war adjustment.

PART II

DRAFTING SUGGESTIONS

Article 24

Paragraph 1

It is suggested that the word "by" at the conclusion of sub-paragraph (a) be deleted.

Paragraph 3

(a) It is suggested that the sentences beginning "The Organization, if it finds that..." and "If such benefits are in fact withheld" should become paragraphs 4 and 5. In this case the last sentence would also become a new paragraph and be reworded as follows: "The provisions of paragraphs 3, 4, and 5 shall operate...". However, it is suggested that this sentence be deleted as superfluous. The terms of Article 67 would seem to be sufficient in themselves.

/(b) It is suggested

(b) It is suggested that the second, third and fourth sentences should be made into a new paragraph 4. This would require the change of the phrase "such complaining Members" in the second sentence to "a complaining Member".

(c) It is suggested that, to conform with the provisions of Article 89, the words "from the date on which written notice of such withdrawal is received by the Organization" be amended to "from the date on which written notice of such withdrawal is received by the Secretary-General of the United Nations."

Article 25

Paragraph 2

(a) The word "country" in sub-paragraph (a) (ii) should be changed to "Member" and the word "Member" be added before "country" in sub-paragraph (b).

(b) It is suggested that the sentence included in the first proviso to sub-paragraph (a) (iii) reading "Import and export prohibitions imposed 1 July 1949" and the proviso following it should be made into sub-paragraph (b) and amended to read "(b) Import and export under sub-paragraph (a) six months each."

(c) It is suggested that the phrase "the standards adopted by a Member under this sub-paragraph" in sub-paragraph (c) should be amended to read simply "these standards".

Article 26

Paragraph 2

It is suggested that sub-paragraph (b) be re-drafted as follows:

"(b) Each Member shall eliminate the restrictions when the factors which gave rise to their imposition in the first place have disappeared and no other factors have since appeared to justify the maintenance of such restrictions. Each Member shall relax the restrictions progressively as such a stage is approached".

Paragraph 3

Paragraph 3

It is suggested that the word "further" be added at the conclusion of the third sentence of sub-paragraph (d).

Paragraph 4

It is suggested that the first sentence be re-drafted as follows:

"4. In giving effect Article, a Member may select imports for prohibition or restriction so as to give priority to imports essential to its domestic employment, programmes".

Paragraph 5

Should the word "country" be used instead of "Member" in the second sentence?

PART III

RESERVATIONS AND ALTERNATIVE TEXTS

Article 24

1. The Delegate for India reserved his position regarding sub-paragraph (b) of paragraph 1 and suggested the following alternative text:

"Margins of preference on any product shall in no case be increased and no new preferences shall be introduced".

The Delegates for Australia and New Zealand supported this alternative text.

2. The Delegates for Brazil and Chile reserved their positions regarding paragraph 3. The former delegate suggested that the words "and particularly with regard to Members' legitimate need for protection" should be inserted after the phrase "having regard to the provisions of the Charter as a whole." The Delegate for Chile supported this insertion.

Article 25

1. The Delegate for Canada reserved his position regarding paragraph 2 stating that if electric power were to be regarded as a good or a commodity, he could only agree to its export under license.

2. The Delegate for India suggested the following amendments:

/(a) Insert

- (e) Insert the words "or to support the price of such products" between "produced" and "or" in sub-paragraph (e) (1) of paragraph 2; and
- (b). Delete the passage "Moreover any restrictions the product concerned" in sub-paragraph (b) of paragraph 2.

3. The Delegate for Norway stated that he could not express an opinion at this stage upon the reservation which the Delegation of Norway had entered at the First Session with regard to sub-paragraph (e) of paragraph 2. His delegation had proposed that that sub-paragraph should cover only agricultural products.

4. The Delegate for Chile maintained the proposal that the Delegation of Chile had made at the First Session, namely that, sub-paragraph (c) of paragraph 2 should not be confined to agricultural and fisheries products.

5. The Delegate for Belgium-Luxembourg proposed the following addition to sub-paragraph (e) of paragraph 2:

"Restrictions imposed under this exception should be strictly limited to the periods during which the aforesaid circumstances occur, and should not be imposed on seasonal commodities at a time when like domestic products are not available".

It was agreed that this suggestion should be referred to the Legal Drafting Sub-Committee.

6. The Delegate for Australia queried whether the language of sub-paragraph (b) of paragraph 2 adequately stated what the First Session had intended. It was agreed to refer this question to the Legal Drafting Sub-Committee.

7. The Delegate for China reserved his position regarding sub-paragraphs (e) and (b) of paragraph 2. He suggested the following re-draft of the former sub-paragraph:

"Import prohibitions or restrictions on any agricultural or other essential products imported in any form necessary to the enforcement of governmental measures which operate to regulate production, distribution, or consumption of like domestic products with a view
/to maintaining

to maintaining a dynamic equilibrium between the diverse economic activities of a country while in the process of its industrialization".

He also suggested that the last three sentences of sub-paragraph (f) be deleted.

Article 26

1. The wording of paragraph 4 was referred to the Legal Drafting Sub-Committee for further examination, the particular point being whether the words "imports required" which had been inserted on the suggestion of the Delegate for the United States were necessary.

2. The Delegate for Belgium-Luxembourg suggested the following addition to sub-paragraph (d) of paragraph 3:

"The Organization may initiate proceedings, analagous to the foregoing, on its own motion, if it considers that any Member is applying import restrictions under paragraphs 1 and 2 in a manner inconsistent with the provisions of paragraphs 1 and 2, or of Article 27."

This suggestion was supported by the Delegates for China and the United States.
