

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

Article 28

Exceptions to the Rule of Non-Discrimination

1. The provisions of this Section shall not preclude
 - (a) restrictions with equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund;
 - (b) prohibitions or restrictions in accordance with sub-paragraphs 2 (a) (i) or 2 (d) of Article 25;
 - (c) conditions attaching to exports which are necessary to ensure that an exporting country receives for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting country;
 - (d) restrictions in accordance with Article 26 which either
 - (i) are applied otherwise consistently with Article 27 against imports from other countries by a group of territories with a common quota in the International Monetary Fund or
 - (ii) assist

- (ii) assist in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 27, a country whose economy has been disrupted by war or both
- (iii) provide a Member with additional imports above the maximum total of imports which it could afford in the light of the conditions in paragraph 2 of Article 26, if its restrictions were consistent with Article 27, and
- (iv) have equivalent effect to exchange restrictions, which are permitted to that Member under the Articles of Agreement of the International Monetary Fund or under the terms of any special exchange agreement, which may have been made between the Member and the Organization under Article 29 PROVIDED that a Member, which is not imposing restrictions on payments and transfers for current international transactions, may apply import restrictions under (iii) of this sub-paragraph in special circumstances and only with the prior approval of the Organization in agreement with the International Monetary Fund.

2. If the Organization finds, after consultation with the International Monetary Fund on matters within the competence of the Fund, that import restrictions or exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided under this Article or in a manner which discriminates unnecessarily against the trade of another Member, the Member shall within sixty days remove the discriminations or modify them as specified by the Organization PROVIDED that a Member may, if it so desires, consult with the Organization to obtain its previous approval for discriminations; under the procedure set forth in paragraph 3 (c) of Article 26 and to the extent that such approval is

/given

given, the discriminations shall not be open to challenge under this paragraph.

3. When three-quarters of the Members of the Organization have accepted the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund, but in any event before 31 December 1951, the Organization shall review the operation of this Article, in consultation with the International Monetary Fund, with a view to the earliest possible elimination of discriminations, under sub-paragraphs 1 (d) (iii) and (iv) of this Article, which restrict the expansion of world trade.

Article 29

Exchange Arrangements

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organization.
2. Members shall not seek by exchange action to frustrate the purposes of this Charter and shall not seek by trade action to frustrate the purposes of the Articles of Agreement of the International Monetary Fund.
3. In order to avoid the imposition of trade restrictions and discriminations through exchange techniques and in order to avoid the danger of conflicting jurisdiction between the Organization and the International Monetary Fund in exchange matters, Members of the Organization shall also undertake membership of the International Monetary Fund Provided that any country, which is not a member of the International Monetary Fund may become a Member of the Organization if upon accepting this Charter it undertakes to enter into a special exchange agreement with the

that any country which is willing to join the Organization but unwilling to join the International Monetary Fund, may become a Member of the Organization if it enters into a special exchange agreement with the Organization, which would

/Organization

/become

Organization which would become part of its obligations under this Charter and Provided further

become part of its obligations under this Charter and Provided further

that a member of the Organization, which ceases to be a member of the International Monetary Fund, shall forthwith enter into a special exchange agreement with the Organization, which shall then become part of its obligations under this Charter.

4. A special exchange agreement between a Member and the Organization under paragraph 3 must provide to the satisfaction of the Organization, in collaboration throughout with the International Monetary Fund, that the purposes common to the Organization and the Fund will not be frustrated as a result of action in exchange matters by the Member in question.

5. A Member which has made a special exchange agreement under paragraph 3 of this Article, undertakes to furnish the Organization with such information as it may require, within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund, in order to carry out its functions relating to this special exchange agreement.

6. The Organization shall seek and accept the opinion of the International Monetary Fund as to whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement and shall act in collaboration with the International Monetary Fund on all questions which may arise in the working of a special exchange agreement under this Article.

Article 30

General Undertaking Regarding Subsidies - Elimination of Export Subsidies - Exceptions

1. If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into its territory, the Member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the estimated effect of the subsidization on the quantity of the affected product or products, imported into or 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 other Member is caused or threatened by any such subsidization, the Member granting the subsidization shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.
2. (a) 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, from remitting such duties or taxes which have accrued, or from using the proceeds of such duties or taxes to make payments to domestic producers.
(b) 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

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 the extension requested should be made.

3. A system for the stabilization of the domestic price or of returns to domestic producers of a primary product, which results over a period 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 involve a subsidy on exportation under the terms of paragraph 2 if it has also resulted over a period 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 stimulate exports unduly or otherwise seriously prejudice the interest of other Members.

4. (a) In any case of subsidization of a primary commodity, if a Member considers that its interests are 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 determined to be a special difficulty of the kind referred to in Chapter VII, 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 Chapter VII have not succeeded, or do not promise to succeed, within a reasonable

/period

period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 shall cease to apply in respect of such product as from 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.

5. Notwithstanding the provisions of paragraph 2 and sub-paragraph 4 (b), no Member shall grant any subsidy on the exportation of any 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.

6. Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with paragraph 6 of Article 66.

Article 31

Non-Discriminatory Administration of State-Trading Enterprises

1. If any Member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product, the commerce of other Members shall be accorded treatment no less favourable than that accorded to the

/commerce

commerce of any country other than that in which the enterprise is located in respect of the purchase or sale by such enterprise of any product.

To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as price, quality, marketability, transportation and other terms of purchase or sale and also any differential customs treatment maintained consistently with the other provisions of this Charter.

2. The provisions of paragraph 1 relating to purchases or imports by state enterprises shall apply to purchases or imports of products for re-sale or for use in the production of goods for sale. With respect to purchases or imports by state enterprises of products for governmental use and not for re-sale or for use in the production of goods for sale, Members shall accord to the commerce of other Members fair and equitable treatment, having full regard to all relevant circumstances.

3. This Article shall apply to any enterprise, organ or agency in which there is effective control by a Member government or over whose trading operations a Member government [is in a position to exercise] exercises effective control by virtue of the special or exclusive privileges granted to the enterprise.

PART II

DRAFTING SUGGESTIONS

Article 28

Paragraph 1

(a) It is suggested that the word "Member" be added before "country" in each case in which that word is used in sub-paragraph (c).

(b) It is suggested that the word "country" in sub-paragraph (d) (ii) be changed to "Member".

(c) It is suggested that the words "conditions in" in sub-paragraph

(d) (iii) be altered to "requirements of".

/Paragraph 2

Paragraph 2

(a) It is suggested that the phrase "previous approval" be amended to "prior approval".

(b) It is suggested that paragraph (2), as it applies not only to Article 28 but also to Article 27 should be made into a new Article 29 and redrafted as follows:

Article 29

"Remedial Action in the Event of Breaches of Article 27 or 28"

1. If the Organization finds, after.....Fund, that

(a) import restrictions or exchange restrictions on payments and transfers in connection with imports other than those excepted by Article 28 are being applied by a Member in a discriminatory manner, or

(b) prohibitions and restrictions excepted by Article 28 are being applied by a Member in a manner which unnecessarily discriminates against the trade of another Member,

the Member shall, within sixty days of being requested to do so by the Organization, cease the discriminatory treatment or modify it as specified by the Organization.

2. A Member may, if it so desires, consult.....to obtain its prior approval for discriminatory treatment.....and to the extent that such approval is given the discriminatory treatment shall not be open to challenge under this Article."

Article 29

Paragraph (2)

The paragraph should be redrafted to read

"2. The Members shall not seek by exchange action;....."

Article 30

Sub-Paragraph (2) (b)

(a) It is suggested that "practices" be changed to "system" which is the language used in sub-paragraph (a).

/(b) It is

(b) It is suggested the last sentence be amended so as to read "The Organization shall then determine...."

Article 31

Paragraph 3

It is suggested that "government" in lines 2 and 3 be deleted.

PART III

RESERVATIONS, ALTERNATIVE TEXTS, ETC.

Article 28

Paragraph 3

- (a) The delegate for South Africa suggested that the word "restrict" in the last sentence should be amended to "obstruct".
- (b) The delegates for France and the United Kingdom suggested that the concluding words of the paragraph should read "insofar as they restrict..."
- (c) The Chairman suggested that the words "which restrict.....trade" should be omitted.

Article 30

- (a) The delegate for Cuba reserved his position regarding the deletion of the words "would be considered as a case under paragraph (1) from sub-paragraph (2) (a) of the text drafted at the First Session.
- (b) The delegate for China did not maintain the reservation entered by his delegation at the First Session regarding paragraph (2) provided that its substance was covered by the Articles dealing with balance of payments. He maintained his delegation's reservation regarding sub-paragraph (4) (c).
- (c) The Legal Drafting Sub-Committee was asked to consider the question raised in the following paragraph of the Report of the First Session:

SECTION D

- "1. (d) (xii) Sub-paragraph (4) (a) of the revision indicates that the consultative procedure of Chapter VII with reference to primary products
/in the case

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 paragraph 3 of the United States Draft Charter, it is suggested that the Drafting Committee consider Article 30 in connection with Chapter VII and with paragraph (6) of Article 66, with a view to simplifying the texts in question. They are intended to provide firstly, 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 secondly, an adequate consultative procedure for dealing with non-primary products according to the general intentions of Article 30 expressed in the opening sentence of this Section."

(d) The delegates for Canada and China reserved their positions regarding sub-paragraph 4 (b).

Article 31

(a) The delegates for Chile and New Zealand reserved their positions regarding the insertion of the words "or for use in the production of goods for sale" in paragraph 2.

(b) The delegate for Chile reserved his position regarding paragraph 3 as redrafted.
