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DRAFT AGREEMENT ON COMMODITY ARRANGEMENTS

Comments by the Australian Delegation on the United Kingdom Delegation's Working Paper (W.9/140)

- (Note: 1. The observations in this paper are made without prejudice to the position of the Australian Government on the subject.
2. They are designed to assist in the analysis by the Working Party of the United Kingdom paper. They do not preclude the possibility that during the discussion of the United Kingdom paper it may become desirable for the Australian Delegation to submit a proposal).

General

Two general aspects of the United Kingdom draft agreement are:-

1. Whether the Draft Agreement is not too restrictive to appeal to countries not members of the General Agreement on Tariffs and Trade. At present they may make with other non-contracting parties agreements which do not conform with the provisions of the Draft Agreement. Article XI of the Draft Agreement would prohibit this.
2. Contracting parties would possibly be assuming in the Draft Agreement rather more specific obligations than they are now subject to with Article XXIX in the GATT which only requires them to "observe to the fullest extent of their Executive authority the general principles of Chapters I to VI".

The Preamble

1. Introductory statement of difficulties

It would be an improvement to add paragraphs to the effect that:

- (a) the special difficulties which arise could often be overcome by inter-governmental arrangements which assure equitable prices to producers and consumers;
- (b) the large degree to which the economic development of under-developed countries and countries in process of development is dependent upon the proceeds of primary products;
- (c) commodity arrangements may prevent or help to alleviate the serious economic difficulties which arise when adjustments between production and consumption cannot be effected by normal market forces alone as rapidly as the circumstances would require;
- (d) a reference containing the sense of sub-paragraph (c) of page 2 of the United Kingdom draft.

2. The general scope of the agreement (the last five lines on page 1 of the United Kingdom paper)

This should be redrafted in the light of the following comments:-

- (i) There appears to be no reason for referring here to the CONTRACTING PARTIES.
- (ii) Co-operation should not be limited to the signatories (but should extend to non-signatory governments) so far as that co-operation is for the purpose of "examining difficulties".
- (iii) The clause "of taking such action where appropriate" should be omitted since it is a commitment that should not be made except in relation to specific proposed agreements on their merits as seen by individual governments.

3. The desiderata under (a) to (c) on page 2 of the United Kingdom paper

- (a) Requires redrafting. Omit the comma after "stability". Introduce the concept of prices that are fair to consumers and producers alike. Do not refer to measures to facilitate long-term price movement but qualify the concept of price stability so that it relates to the moderation of short-term price fluctuations without interfering with long-term movements. But leave in the sub-paragraph the idea that commodity agreements may promote the long-term equilibrium of supply and demand consistent with the efficient allocation of productive resources in the world as a whole.
- (c) Is not essential as a desideratum and the idea seems to belong more logically to the statement of difficulties. The incorporation there of the sense of this sub-paragraph and of the sense of sub-paragraph (a) of Article 57 has already been suggested.

Article I

- A. It appears to be intended (when paragraph 1 of this Article is read with Article XI) that other inter-governmental organizations such as the Food and Agriculture Organization may not arrange commodity agreements (even though they are commodity agreements which so far as the signatories to this Agreement are concerned would not be in conflict with the Agreement) without using the machinery provided in this Agreement.
- B. At present the Food and Agriculture Organization has certain powers in regard to commodity agreements. Could it not be left to exercise those powers provided that any commodity agreements arranged as a result of their exercise did not, so far as the signatories to this Agreement were concerned, conflict with the provisions of this Agreement (with Article XI of this Agreement being suitably amended). The signatories would, of course, need to make a determination.
- C. If the view about the Food and Agriculture Organization is accepted and Article XI(1) - i.e. that signatories will not join any commodity arrangement except in accordance with the provisions of this Agreement - is suitably amended can the reasoning not be extended to the point of recognising that, without going through the negotiating conference procedure, signatories with or without non-signatories, may enter into a commodity arrangement provided the signatories determine that the arrangement conforms with the principles relating to commodity arrangements in the Draft Agreement.
- D. As a matter of drafting, Article I would be improved by limiting its content to the present paragraph 1 plus Article XI(1) - making three separate paragraphs of the present paragraph 1.

Paragraph 1

Paragraph 1 should give non-signatory governments the same right as signatory governments to make submissions. The standing committee should not be able to decide that a case does not warrant further action if, say, three countries support the case.

Paragraph 2

Insert after the word "investigate" in the first line "the statement and proposals (if any) as well as". The last sentence of the paragraph implies that study groups may be left in existence indefinitely.

Paragraph 3

Provision should be made for non-signatory governments to have the right to participate in study groups on the same terms as signatory governments, that is, through representatives or observers as individual governments may desire.

Paragraph 4

There is an inconsistency between this paragraph and paragraph 1. The report referred to in this paragraph should be published (cf. Article III(c)).

New paragraph

Provide for signatories to refer questions to appropriate existing (or future) organizations concerned with commodities (e.g. the Food and Agriculture Organization) for examination and their reports to have the same force as the report of a study group.

Article II

There seems no good reason why the recommendations of a study group should be subject to a two-thirds veto by the standing committee. It would, however, be reasonable to allow a two-thirds majority of the standing committee to prevent a negotiating conference recommended by an expert or experts or by a committee of signatories.

Paragraph 2 would be too restrictive as the only means of getting a negotiating conference quickly, but it is not the only means of doing so, since a signatory could ask the standing committee to have a proposal referred to a committee of signatories and a negotiating conference would then have to be called if the committee of signatories so recommended and two-thirds of the standing committee did not oppose that recommendation. Even so, it would be desirable to provide for the calling of a negotiating conference at the request of (a) countries whose interests represent a significant part of world production or consumption of, or trade in, a commodity; (b) countries which consider their economies are dependent to an important extent on that commodity.

The word "otherwise" needs clarification.

Article III

The preamble. Provide for the non-application of those principles to agreements covered by Article X.

Sub-paragraph (a). Delete the words "the negotiation or operation of" because Article III is concerned with participation in commodity arrangements. Alter "signatory" to "government-signatory or non-signatory".

Sub-paragraph (b). Delete (unnecessary).

Sub-paragraph (d). This is modelled on sub-paragraph (c) of Article 63 of Chapter VI and was, therefore, a provision applying only to commodity control agreements. It should not apply to other agreements and hence should be deleted from Article III.

Sub-paragraph (e). The draft should make clear whether (a) a commodity arrangement which is not a commodity control agreement and (b) a commodity control agreement may be concluded if all producing (or all consuming) countries should refuse to participate. One means of resolving this problem may be through making a suitable provision in Article X.

Sub-paragraph (f) and (g). Seem unnecessary.

Article IV

The Australian delegation has stated that it does not see the need for a distinction between a commodity control arrangement and other commodity arrangements because it believes that the arrangement should fit the circumstances of the problem it is designed to meet.

Whilst not questioning that it may be appropriate to provide in a particular commodity arrangement for the principle of equal votes for producers and consumers the Australian delegation has questioned the need to provide in the Draft Agreement that some agreements must contain equal votes for producers and consumers on substantive matters. Any question of such a provision is a prejudgment and if a problem on voting arises which cannot be resolved in the particular agreement it might be appropriate to have it referred to the signatories (some amendment of Article XI might meet the situation).

Subject to these reservations the Australian delegation offers the following comments on the draft of Article IV.

The classification of a commodity agreement subject to Article IV is stricter than the classification of a commodity control agreement in Article 61 of Chapter VI. Article 61 did not treat an agreement which involved the regulation of production or the quantitative control of exports or imports without involving the regulation of prices as a commodity control agreement unless the regulation of production or the quantitative control of exports or imports had the purpose or effect of reducing, or preventing an increase in, the production of, or trade in, the commodity concerned. In the case of an agreement that involved the regulation of production or the quantitative control of exports or imports (but which did not involve the regulation of prices) the International Trade Organization could determine that it did not have the purpose or would not have the effect of reducing, or preventing an increase in, the production of, or trade in the commodity concerned and was then to decide whether it should be subject to any of the conditions governing commodity control agreements.

It is important, because of the stricter conditions attaching to commodity control agreements (that is the principles set out in Article IV of the United Kingdom draft and more especially the principle in (b) of that Article) that the definition of commodity control agreements should be no wider than in Chapter VI. (there could be an agreement involving the regulation of production or the regulation of exports or imports which did not prevent an increase in production or an increase in trade).

Sub-paragraph (a) of Article IV makes some drafting changes which do not appear to be necessary to sub-paragraph (a) of Article 63 of Chapter VI.

Sub-paragraph (b) makes some drafting changes which do not appear to be necessary to sub-paragraph (b) of Article 63 of Chapter VI. The "shall" in the second sentence of this sub-paragraph in Article IV makes mandatory a provision which is not appropriate to all types of commodity control agreements.

Sub-paragraph (c). Delete (unnecessary).

There appears to be a possibility of conflict between sub-paragraph (d) of paragraph (1) of this Article and paragraph (2) of this Article. The CONTRACTING PARTIES might not agree with the signatories that a particular commodity agreement was in accordance with the provisions of Articles III and IV.

Whether, as we are inclined to think, paragraph 2 should remain in Article IV and sub-paragraph (d) be deleted (but covered in GATT) depends on the United Kingdom's proposal for securing clearance under GATT for commodity agreements conforming to the Draft Agreement. It seems necessary that this be discussed at this point.

Sub-paragraph (3). Some further clarification of the intention of this paragraph is necessary. To the extent that it is designed to secure more rapid action it would appear to be more suitably placed in Article II. Is there any need for the words "Where conditions.....imminent, and".

Is it intended to suggest the possibility of a producers' agreement in a serious situation if agreement cannot be reached with consumers?

The proposed duration of the arrangement - one year - seems too short to be practical.

How would it be proposed that an arrangement of this kind be exempted from GATT?

Article V

Paragraph 1 is unnecessary in view of sub-paragraph (c) in Article III and sub-paragraph (d) of paragraph 3 of Article V.

Paragraph 2. It seems necessary to provide that the members of a particular agreement can decide what material relating to that agreement should be unpublished or treated as confidential to the participants in that agreement.

Paragraph 3(b). Whether the signatories and the CONTRACTING PARTIES require separate or joint representation depends on the administrative arrangements made. The members of each agreement should decide whether to invite observers from other inter-governmental organizations.

Paragraph 4. This needs clarification.

Article VI

This Article should be broken up into two Articles, one dealing with the settlement of disputes, and one dealing with the content of the rest of Article VI.

Paragraphs 1 and 2. The provision should be one leaving disputes to be settled in accordance with whatever procedures in regard thereto are laid down in a commodity agreement except when a dispute relates to (a) an application of the principles of the Agreement on Commodity Arrangements; or (b) the rights or obligations of any contracting party to GATT. Disputes as to (a) should be determinable by the signatories to the Agreement on Commodity Arrangements unless a majority of the members of the Commodity Council do not agree that it is such a dispute. Disputes as to (b) should be determinable by the CONTRACTING PARTIES provided that in any such determination the CONTRACTING PARTIES shall not require a member of a commodity agreement to refrain from taking any action which a majority of the signatories consider is necessary for the carrying out of a commodity agreement which has been approved by the CONTRACTING PARTIES in accordance with the provisions in GATT for the approval of commodity agreements.

Article VII

Delete the words in paragraph 1 ... "so long as the Committee exists" and of the word "thereafter".

Further consideration seems desirable to clarify the respective jurisdictions of I.C.C.I.C., the signatories, and other international organizations concerned with commodity arrangements.

Article VIII

There is no reason for paragraph 2 having regard to the provision in sub-paragraph (c) of Article III, the provision in sub-paragraph (d) of Article V and the provisions in paragraph 1 of Article IX.

The provision relating to the maximum period of commodity agreements (which should be five years) should be included in Article IV and should be stated in the full form of paragraph 1 of Article 65.

Article IX

I suggest that the words "for their observations" be deleted from sub-paragraph (a) and that paragraph 2 be deleted. The subject of relations between the signatories and the CONTRACTING PARTIES should be dealt with in a separate Article.

Article X

Article X should be the final Article in the Agreement.

Suggest that paragraph 2 be numbered as paragraph 3 and a new paragraph 2 be inserted. The new paragraph 2 might be along the following lines:-

2. Should the signatory or signatories be desirous of entering into a commodity arrangement the terms of which would not be in accordance with the provisions of this Agreement and which is not excepted under paragraph 1 of this Article, that signatory or signatories shall submit to the signatories a statement setting out the reasons why the agreement is proposed, its nature and method of operation and the reasons why the signatory or signatories consider that the difficulties which the proposed agreement is intended to overcome cannot be met except by means of such an agreement. If the signatories consider that such an agreement, or such an agreement as amended in a manner acceptable to the signatories making the proposal, is needed to overcome the difficulties in question, they shall submit the proposed agreement to the CONTRACTING PARTIES to GATT for a determination by them whether the agreement should be allowed to come into operation.

Article XI

Paragraph 1 should be transferred to Article I.

Paragraph 2 seems unnecessary but if a general clause of this nature is deemed desirable it should be redrafted to make it suit the Agreement as amended.

Article XII

No comment except to provide for a non-voting chairman.

Article XIII

The chairman should be the chairman of the signatories and should not have a vote.

The signatories should be able by a simple majority of all signatories to modify or annul decisions of the standing committee. This provision should be transferred from Article XIII to Article XII.

Article XIV

A simple majority should be adequate in paragraph 1.

We wish to give further consideration to the question of administrative relationships and to Article XV.

Article XVA

This provision appears to be redundant (see Article XIV).

Amendments to the Draft Agreement

Some provision seems necessary.