

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.CHAPTER V - SECTION C(QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROLS)Articles 25 - 29 incl.ANNOTATED AGENDAIntroduction

1. This agenda, prepared by the Secretariat, supersedes the relevant parts of document E/PC/T/W.64 and should be read in conjunction with the report of the Drafting Committee, (E/PC/T/34) which is hereafter referred to as "D.C.Report".
2. It incorporates the reservations and comments made by delegations and recorded in the D.C. Report and all amendments, presented by delegations up to 1800 hours on Saturday, 21st June 1947 together with comments submitted by the Secretariat. Underlining indicates additions to, square brackets deletions from the text of the D.C. Report.
3. The following papers containing the proposals and comments submitted by delegations which are incorporated in this agenda have already been circulated as working documents:-

Chinese Delegation	E/PC/T/W.73, 74 and 75
Indian Delegation	E/PC/T/W.136
Cuban Delegation	E/PC/T/W.194
Norwegian Delegation	E/PC/T/W.196
Netherlands Delegation	E/PC/T/W.199
United States Delegation	E/PC/T/W.208 and 216
Belgium-Luxemburg Delegation	E/PC/T/W.209
United Kingdom Delegation	E/PC/T/W.212
French Delegation	E/PC/T/W.213
Australian Delegation	E/PC/T/W.214, 215 and 218
Czechoslovak Delegation	E/PC/T/W.217 and 219

SECTION C. QUANTITATIVE RESTRICTIONS AND

EXCHANGE CONTROL

Note 1. Study by the International Monetary Fund and the International Bank for Reconstruction and Development.

The following passage is quoted from the Report of the First Session (page 14):

"It is generally felt that it would be of great assistance to the work of the Preparatory Committee if the Fund and the Bank could be invited to study Articles 26, 28 and 29 with a view to putting their considered opinion on these issues before the Second Session of the Preparatory Committee."

In accordance with this suggestion, the Fund and the Bank were invited to make such a study to be considered at the Second Session.

Note 2. Study suggested by the Economic and Employment Commission.

At the 24th meeting of the Drafting Committee (on February 27, 1947), attention was paid to the Report of the Economic and Employment Commission (E 255), particularly with reference to a suggested examination of the multilateral aspects of world trade and the help this examination might afford in applying Articles 26, 27 and 28. (cf. E.255, p. 19). The Chairman

"suggested that all members of the Drafting Committee should keep in touch with their Governments regarding the continued work of the Economic and Employment Commission and its sub-committees and instructed the Secretary to follow these developments and to report to the Second Session in Geneva on the developments in this respect". (E/PC/T/C/90, page 3).

Article 25.- General elimination of quantitative
Restrictions

Note 3. The Secretariat has received the following communication from the Delegation of New Zealand:

In view of the relationship of Article 25 to other parts of the Charter which are at present under consideration in Committee, the New Zealand Delegation reserves the right at a later stage to lodge an amendment to Article 25.

Paragraph 1

Note 4. The Delegation of the United States of America
23: 1 submit the following amendment and comment to this paragraph (E/PC/T/W.206)

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 licenses or other measures, shall be instituted 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.

COMMENT: The opening phrase of paragraph 1 results in a double cross-reference between the general principle laid down in paragraph 1 and the various exceptions stated elsewhere, each of which contains an appropriate cross-reference to paragraph 1. Double cross-references have been avoided elsewhere in the Charter.

Paragraph 2

Note 5. The Australian Delegation submit the following amendment and comment to sub-paragraph (b) (cf. E/PC/T/W.218):
25: 2 (b)

25. 2. (b) "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other essential products in the exporting Member country."

COMMENT:

It is felt that the wording of this sub-paragraph should make it clear that a Member may take action when a critical shortage is clearly about to arise unless remedial action is taken rather than wait until it has actually arisen.

Note 6
25: 2(d)

The Delegations of the United States of America and of the United Kingdom propose the deletion of sub-paragraph (d) and its transfer to Article 37. (cf. E/PC/T/W.208 and E/PC/T/W.212). The Delegation of the United States of America offers the following.

COMMENT:

Sub-paragraph (d) should be replaced by the insertion in Article 37 of an appropriate provision excepting from all of Chapter V measures undertaken in pursuance of obligations under regulatory commodity arrangements concluded in accordance with Chapter VII (See page 5 of U.S. working paper 7009, 12 June 1947, submitted to the Sub-committee on Chapter VII.)

The Delegation of the United Kingdom, referring to E/PC/T/W.137 and the remarks of the United Kingdom Delegate at the 5th Meeting of Commission B (E/PC/T/B/FV 5, p.44 and 45) suggest insertion of this provision in Article 37 after item (g) in the following form:

"undertaken in pursuance of obligations under inter-governmental commodity arrangements amended in accordance with the provisions of Chapter VII"

Secretariat Comment:

1) The relevant remarks in E/PC/T/W.137 (observations and proposals by the United Kingdom Delegation to Chapter VII) are as follows:

Before coming to the text of Chapter VII itself, it is necessary to point out that the provisions in Chapter V regarding the subject matter of Chapter VII are not satisfactory in their present form and it is suggested that a reference to Chapter VII should be inserted in Article 37 (the General Exceptions Article) in the following form:

"(1) undertaken in pursuance of obligations under inter-governmental commodity arrangements concluded in accordance with the provisions of Chapter VII".

If this amendment were adopted, clause (d) in Article 25(2) should be omitted.

2) The relevant remarks in the United States working paper 7009 are as follows:

"Suggested amendment to Chapter V concerning Chapter VII, Article 37 - General exceptions subject to, nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of measures:

(1) Undertaken in pursuance of obligations under regulatory inter-governmental commodity arrangements concluded in accordance with the provisions of Section G of Chapter VII."

Note 7
25:2(e) The Delegation of China propose the following amendment (cf. E/PC/T/W.75) to sub-paragraph (e):

The first sentence of this Sub-Paragraph should be amended as follows: "Import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate (i) to regulate the quantities of the like domestic product permitted to be marketed or produced, or stabilise the prices of such products, or (ii) to remove a temporary surplus below the current market level."

The last three sentences of this Sub-Paragraph beginning with "Moreover, any restrictions applied under (i) above" and ending with "which wish to initiate such consultations" should be deleted.

Note 8
25: 2(e) The Delegation of the Netherlands support this amendment and propose the following wording (cf. E/PC/T/W.199):

"Import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate (i) to regulate the quantities of the like or a directly competitive domestic product permitted to be marketed or produced, or to

stabilise the prices of such products, or (ii) to remove a temporary surplus of the like or a directly competitive domestic product below the current market level".

COMMENT of the Netherlands Delegation:

If it would not be permissible to extend import restrictions supplementary to governmental measures as provided for in this paragraph to directly competitive products it is to be feared that such measures in some cases might easily be frustrated if the import restrictions should apply to like products only.

Note 9
25:2(e)

The Delegation of Norway propose the following amendment (cf. E/PC/T/W.196)

(e) Import restrictions on any agricultural (or fisheries) product imported in any form necessary to the enforcement of governmental measures which operate (i) to regulate the quantities permitted to be marketed or produced of the like domestic product or of domestic products wholly or in part produced by the imported commodity 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. Any member imposing restrictions on the importation of any product pursuant to this subparagraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above 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. This rule shall not apply to products used in the production of domestic agricultural products. In determining

Note 10.
25: 2 (e)

The Delegation of the United States of America, re-numbering this sub-paragraph as sub-paragraph (d) in view of the proposed deletion of the present sub-paragraph (d), submit the following amendment and comment (cf. E/PC/T/W.208):

[The] (d) 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. Any Member [imposing] applying restrictions on the importation of any product pursuant to this sub-paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above 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.]

COMMENT:

The elimination of the consultative provision in the last sentence of sub-paragraph (e) is proposed with a view to avoiding duplication of the consultative provision in paragraph 4 of Article 27 dealing with the same subject.

Note 11
25: 2 (e)

The United Kingdom Delegation will wish to raise 2 points of interpretation in regard to this sub-paragraph (E/PC/T/W.121).

Note 12
25: 2 (e)

1. The countries represented by delegates reserving their position or making suggestions with reference to paragraph 2 (e), as indicated under the letters (b)-(g) in the D.C. Report (page 20) are identified below :

- (b) Belgium-Luxemburg (suggesting addition concerning seasonal commodities).
- (c) Chile ("This paragraph should not be confined to agricultural and fisheries products").
- (d) China (reformulation of 25: 2e and reservation on 27:4).
- (e) India (addition and deletion of certain words).

Note by the Secretariat : In line 4 of this comment the word "Moreover" should be added before "any restrictions", and in line 5 "2(e)" should be substituted for "2(f)".

- (f) Norway ("unable to express an opinion" on reservation at First Session.)
- (g) United Kingdom (insertion referring to "directly competitive product").

Note 13
25: 2 (f)

The Delegation of the United States of America proposes the deletion of the present sub-paragraph (f) with the following comment (E/PC/T/W.208):

paragraph (f) should be omitted inasmuch as its substance is already covered by sub-paragraph (g) of Article 37. In order to make this perfectly clear, sub-paragraph (g) or Article 37 might be amended as follows :

"(g) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as those relating to

the enforcement of state-trading monopolies, customs
/enforcement/ regulations, prevention of deceptive
practices, and the protection of patents, trade marks
and copyrights;"

Note 14
25: 2 (f)

The Cuban Delegation propose the insertion of the
following new sub-paragraph (f), renumbering the present
sub-paragraph (f) as sub-paragraph (g) (cf.E/PC/T/W.194):

"(f) Import restrictions on any product in which a
Member considers domestic production essential to the
economic development of its country, either in the
agricultural or in the industrial sphere, in case
the subsidization of this production has proved or is
likely to prove unoperative, the Member shall eliminate
the restrictions when, after an adequate period which
regularly shall not exceed three years, the conditions
of the agricultural or industrial production to be
developed prove that it is not capable of maintaining
itself without further protection during an unlimited
period of time.

If in the opinion of the Organization the measures
adopted by a Member under this sub-paragraph are
likely to have an extraordinary and unduly restrictive
effect on international trade, the Organization may
request that the Member consult with other interested
Members with a view towards effecting a satisfactory
adjustment of the matter.

If no such adjustment can be effected the Organiza-
tion shall, after investigation, and if necessary
after consultation with the Economic and Social
Council of the United Nations and any competent

(f) (contd.)

inter-governmental organization, make appropriate recommendations to the Members concerned.

Paragraph 2 of Article 35 shall be applied correspondingly."

Note 15.
25: 2 (g)

The Indian Delegation propose the following new sub-paragraph (g)

"(g) Prohibition or restriction temporarily applied to exports to particular countries as a safeguard against the effects of inflationary conditions prevailing in those countries."

Cf. also amendment to Article 28, paragraph 1 (b).

Note 16.
25: 2 (g)

The delegation of Syria and Lebanon propose the following new sub-paragraph:

"(g): Import prohibitions or restrictions imposed for the purpose of protecting domestic production".

The following reasons for this proposal are presented:

"The provisions of Article 25 appear to be incompatible with the general purposes of the Charter, and, in particular, with the provisions of Articles 9 and 13, which make plain the importance of economic development and the conditions under which governmental assistance should be extended to such development.

As Syria and Lebanon are among those countries whose resources are still under-developed, they are obliged to resort to certain measures of quantitative restriction in order to protect domestic production or newly established industries."

Article 26. - Restrictions to safeguard the balance of payments

Note 17.
26:

The Delegation of Czechoslovakia submit the following amendment and comment to Article 26 (cf. E/PC/T/W.217)

Par.1. The Members may need to use import or export

restrictions as a means of safeguarding their external financial position and 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 of imports or exports 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 or exported insofar as this is necessary to safeguard its balance of payments and monetary reserves.

Para.2. The use of import or export restrictions under paragraph 1 of this Article shall be subject to following requirements:

a)

b)

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

3. (a)

(b) The Organization may at any time invite any Member applying import or export restrictions under

(c)

(d) Any Member which considers that any other Member is applying import or export restrictions under

(e)

4. In giving effect to the restrictions on imports or exports under this Article, a Member may restrict imports or exports of products according to their relative essentiality in such a way as to give priority to

importation or exportation of products required by its domestic employment reconstruction, development or social policies or programmes.....

5. If there is persistent and widespread application of import or export restrictions under this Article

6.

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

Comment:

The underlying principle of Article 26 is the protection of the balance of payments and monetary reserves. It is being generally understood that the term "monetary reserves" includes gold and convertible currencies. The safeguarding of the balance of payments and monetary reserves can be in principle approached from two different angles:

- a) Restrictions on imports from countries with convertible currencies.
- b) Restrictions on exports to countries with inconvertible currencies.

The consequence of the division of the world in two parts i.e. one part with convertible currencies and the other part with inconvertible currencies is a disequilibrium of the price levels in these two parts. Thus, there prevails a natural tendency to purchase primary commodities in countries with convertible currencies, where prices are more advantageous and sell manufactured products to countries with inconvertible currencies. Exporters acting in accordance to "commercial considerations", are being attracted by prices in countries with inconvertible currencies and neglecting trade in countries with convertible currencies. The present Draft Charter does not respect the difficulties which arise from the drain of exportations to countries with inconvertible currencies.

For these reasons the Czechoslovak Delegation has suggested the above-mentioned amendments.

Paragraph 1

Note 18.
26: 1

The Delegation of Australia submit the following amendment and comment for the 2nd sentence of paragraph 1 (cf. E/PC/T/W.215):

"..... Accordingly, notwithstanding the provisions of Article 25, any Member, in order to safeguard its external financial position and balance of payments, may restrict the quantity or value of merchandise permitted to be imported [insofar as this is necessary to safeguard its balance of payments and monetary reserves]."

COMMENT:

The existing wording of paragraph 1 provides that import restrictions may be imposed "insofar as this is necessary" to safeguard the Member's position. Paragraph 2 sets out the requirements limiting the application and the extent of the restrictions, according to the circumstances of the Member. The words quoted from paragraph 1 presumably were not intended to have force in themselves, since paragraph 2 covers the same point in greater detail. There may possibly be some risk, however, that they could be interpreted to mean that import restrictions were not "necessary" (and therefore were not permitted) until every other possible corrective measure (such as exchange control, exchange depreciation, etc.) had been tried and found inadequate.

Note 19.
26: 1

The Delegation of the United States of America

submit the following amendment and comment to paragraph 1 (cf. E/PC/T/W.216):

1. Some ~~The~~ Members may need to use import restrictions temporarily as a means of safeguarding their external financial positions and as a step towards the restoration of equilibrium in their balances 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 paragraph 1 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 and monetary reserves.

COMMENT:

The first two changes are intended to remove the implication in the New York draft that import restrictions for balance of payments reasons are expected to be used generally and indefinitely. The other changes are designed to clarify the intention of the paragraph.

Note 20. The Delegation of France propose the following amendment to paragraph 1 (cf. E/PC/T/W.213):

1. The Members may need to use import restrictions as a means of safeguarding their external financial position and as a step toward the restoration of equilibrium in their normal 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 monetary resources and restore equilibrium in its normal balance of payments.

Paragraph 2

Note 21. The Delegation of Australia submit the following proposal and comment to sub-paragraph (a) (cf. E/PC/T/W.215):

Paragraph 2(a). Second Sentence:

"..... In determining the extent and severity of restrictions, due regard should be paid in each case to

any special factors which may be affecting the level of the Member's reserves, to any commitments or other circumstances which may be affecting its need for reserves, and to any special credits or other resources which may be available to protect its reserves."

COMMENT:

The change proposed in paragraph 2 (a) is similarly designed to remove the possible interpretation that restrictions could be disallowed on the ground that, for example, the Member's currency was thought to be over-valued, and this constituted a "special factor" affecting the level of its reserves.

It remains clear, of course, that the Organization has the right, during the course of consultation with the Member under paragraphs 3 (a) or 3 (b), fully to discuss and recommend alternative action which the Member might take to meet its difficulties.

Note 22

26: 2 (a)
and (b)

The Delegation of France propose the following amendment to sub-paragraphs (a) and (b) (cf. E/PC/T/W.213):

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

- (a) Delete the words in brackets. The text would read as follows: "No Member shall institute any new restrictions or "intensify....."
- (b) The Members shall progressively eliminate the restrictions as the conditions which justified their institution and intensification under sub-paragraph (a) improve. They shall remove the restrictions when, subsequent to this progressive elimination, they are in a position to satisfy a free demand for imports without impairing their normal balance of payments or jeopardising their monetary reserves.
- (c)"

Note 23.
26: 2 (c)

The Chinese Delegation propose the deletion of sub-paragraph (c) (cf. E/PC/T/W.73).

Note 24.
26: 2 (c)

The United Kingdom Delegation propose to delete sub-paragraph (c), substituting in its place the following text (cf. EPC/T/W. 211):

"Members shall not apply the restrictions in such a manner as to exclude the importation from other Members of any description of goods in minimum commercial quantities, provided that during a transitional period to be determined by the Organisation, this obligation shall not extend to any description of goods in respect of which domestic production to meet domestic demand is, for the time being, severely restricted by Governmental action."

Note 25.
26: 2 (c)

The Australian Delegation submit the following amendment and comment to sub-paragraph (c) (cf. E/PC/T/W.215):

"As far as is reasonably practicable, the Members shall not apply the restrictions in such a manner as to exclude completely imports of any product /class of goods/."

Comment:

The purpose of this sub-paragraph was primarily to avoid unnecessary damage to the commercial interests of other Members, by ensuring that goods should not be excluded completely from an accustomed market. It is suggested, however, that for administrative reasons some flexibility should be allowed.

The word "product" is suggested instead of "class of goods", because the latter phrase has a very wide meaning in most customs classifications.

Note 26.
26: 2 (c)

The Indian Delegation propose to insert the words "as far as possible" between "not" and "apply" in sub-paragraph (c) (cf. E/PC/T/W.136).

Note 27.
26: 2 (c)

The two delegates expressing a preference for the wording of the First Session (cf. D.C. Report, pages 20-21) represented Chile and Czechoslovakia.

Paragraph 3

Note 28.
26: 3 (a)

The Delegation of the United States of America
submit the following amendment and comment (cf. E/PC/T/W/216)

- 3.(a) Any Member which is not applying restrictions under paragraphs 1 and 2 of this Article, but which is considering the need for their institution under such paragraphs, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the institution 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 of timing of any particular measures which it may ultimately determine to adopt.

COMMENT:

This addition will eliminate the possible implication that quantitative restrictions under Article 25, paragraph 2, require consultation under this sub-paragraph.

Note 29.
26: 3 (a)

The Delegation of China propose the following amendment (cf. E/PC/T/W.73):

Paragraph 3(a) : The first sentence should be amended as follows : "Any member which is not applying restrictions under Paragraphs 1 and 2 of this Article but finds itself in need of instituting such restrictions shall, immediately following upon their institution, consult with the Organization as to.... ... on the economies of other Members."

The last sentence of paragraph 3 (a) should be deleted.

Note 30.
26: 3 (c)

The Delegation of Australia submit the following amendment and comment to sub-paragraph (c) (cf. E/PC/T/W.215):

Paragraph 3 (c): Final Sentence:

"..... To the extent to which such approval has been given, the provisions of sub-paragraph (a) of this paragraph shall not apply, and 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 of this Article."

COMMENT:

If a Member has obtained the prior approval of the Organization for restrictions, after consultation in terms of paragraph 3 (c), it seems unnecessary and undesirable that the Member should be required to consult again before actually introducing restrictions. It may be noted that paragraph 3(b) gives the Organization the right to consult at any time with any Member which is in fact applying restrictions.

Note 31.
26: 3 (c)

The observation on the applicability of sub-paragraph (a) (D.C. Report, page 21) was made by the delegate for Australia.

Note 32.
26: 3 (d)

The Delegation of the United States of America submit the following amendment and comment (cf. E/PC/T/W.216):

- (d) Any Member which considers that any other Member is applying import restrictions under paragraphs 1 and 2 of this Article in a manner inconsistent with the provisions of this Article ~~[those paragraphs]~~^{1/} or of Articles 27 or ~~[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 ☐ If the Organization ☐, if it ☐ is satisfied that there is a prima facie case that the complaining Member's interests are adversely affected, it shall afford the Member applying the restrictions full opportunity to justify its action, and shall consult ☐ may after consultation with the International Monetary Fund on any aspect of the matter falling within the competence of the Fund ☐, and, if it ☐. The Organization ☐ after submitting ☐ may submit observations to the parties with the aim of achieving a satisfactory settlement of the matter in question. If no such settlement is reached, the Organization shall ^{2/} recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the provisions of ☐ paragraphs 1 and 2 of ☐ this Article or of Article 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 or Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

COMMENT:

- 1/ This sub-paragraph should not be limited to non-compliance with paragraphs 1 and 2 of this Article. The procedure should be equally applicable to, and frequently will involve of necessity, questions of non-compliance with other paragraphs, such as 3, 4 and 7.
- 2/ The substitution of the word "shall" for "may" is to avoid the implication that the Organization would be free to condone obvious violations of the provisions of the Article.

The other changes in this sub-paragraph are drafting suggestions.

Note 33. 1) The addition mentioned in the D.C. Report (page 22)
26: 3 (a) under item (c) was proposed by the delegate of Belgium and seconded by the delegates of Canada and the United States.

2) The suggestion mentioned in the D.C. Report (page 22) under item (d) was made by the delegate of the United States.

Note 34.
26: 3 (e)

The Delegation of Belgium-Luxembourg proposes to add the following words at the end of the first sentence of sub-paragraph (e) (cf. E/PC/T/W.209)

"in so far as the methods used are aimed at the development rather than the contraction of international exchange."

COMMENT:

The present amendment aims at bringing Article 26 into line with Chapters III and IV and with the fundamental objects of the Charter. The observations of the Sub-Committee on Article 6 (cf. E/PC/T/95, pages 4 and 5) hold equally good in the case envisaged in paragraph 3 (e) of Article 26.

Note 35.
26: 3 (e)

The French Delegation propose the following amendment (cf. E/PC/T/W/213):

(c) The Organization, when intervening under
sub-paragraph (b) or making recommendations
under sub-paragraph (d),.....

Paragraph 4.

Note 36.
26: 4

The Delegation of Australia submit the following amendment and comment to this paragraph (cf. E/PC/T/W/215):

"In giving effect to the restrictions on imports under this Article, A Member applying import restrictions in accordance with paragraphs 1 and 2 of this Article may restrict imports of products according to their relative essentiality determine the scope, severity and incidence of the restrictions, in relation to imports of different products or classes of products, in such a way as to give priority to the importation of those products which are more essential in the light of required by its domestic employment, reconstruction, development or social policies and programmes. In so doing, the Member shall take account of the effects of its restrictions on the economies of other Members, and shall seek to avoid all unnecessary damage to the commercial their interests of other Members.

COMMENT:

This re-wording is intended to clarify the meaning and purpose of the paragraph.

Note 37.
26: 4

The French Delegation propose the following revision (cf. E/PC/T/W/213):

"4. In giving effect to the restrictions on imports under paragraph 1 of this Article,....."

Note 38.
26: 4

The four delegates who felt that the text should be clarified (D.C. Report, page 22) represented Brazil, Chile, Czechoslovakia and France.
Paragraph 5

Note 39.
26: 5

The Cuban Delegation, referring to Article 6 of Chapter III, propose the insertion of the following new paragraph 5, renumbering the present paragraphs 5, 6 and 7 accordingly (Cf. E/PC/T/W/194):

"5. Any Member which considers that its balance of payment difficulties are based on the disequilibrium in the balance of payments of another Member or other Members, before acting in accordance with the foregoing paragraphs, and in order to implement the provision of Article 6, shall bring the matter for discussion to the Organization. The Members concerned shall then participate in discussions on the possibilities and forms of common action."

Secretariat Comment: The "Sub-Committee on Chapter III" in its report to Commission A (E/PC/T/95) has proposed the following text for Article 6:

Article 6

Removal of Maladjustments within the Balance of Payments.

1. In the event that a persistent maladjustment within a Member's balance of payments is a major factor in a situation in which other Members are involved in balance of payments difficulties which handicap them in carrying out the provisions of Article 4 without resort to trade restrictions, the Member shall make its full contribution, together with appropriate action on the part of the other Members concerned, towards correcting the situation.

2. Action in accordance with this Article shall be taken with due regard to the desirability of employing methods which expand rather than contract international trade.

The following comments were submitted by this Sub-Committee:

Article 6

19. The Sub-committee has proposed a number of changes in Article 6 after an examination of the amendments proposed by the Delegations of Australia, France, the United Kingdom and the United States of America. The Sub-committee considers that the revised version of this article describes more precisely than the previous text the situation which it is intended to cover and that the responsibilities of Members in such a situation are more clearly stated. In addition to certain drafting changes, the Sub-committee would draw attention to the significant alterations proposed in the text.

20. The Sub-committee has replaced the words "fundamental disequilibrium" by the expression "persistent maladjustment within the balance of payments". In the view of the Sub-committee the term "fundamental disequilibrium" was not satisfactory for the reason that it appears in the Articles of Agreement of the International Monetary Fund with a special meaning which might not be always applicable to the conditions envisaged in this paragraph.

21. By a maladjustment within a country's balance of payments the Sub-committee intends to refer to a situation in which an abnormal or undesirable relationship exists between the different items which make up that balance and in particular where a balance is achieved only by means of an undue movement of items of the type which enter into monetary reserves.

22. The characterisation of the state of affairs as one in which the persistent maladjustment "is a major factor in a situation in which other Members are involved in balance of payments difficulties" is intended to stress, firstly, that balance of payments difficulties are not necessarily caused by maladjustments within another country's balance of payments, and secondly, that the Article is intended to apply only when the persistent maladjustment is a major factor in the situation.

23. The Sub-committee has expanded the phrase in the former text, "handicap them in maintaining employment" to "handicap them in carrying out the provisions of Article 4 without resort to trade restrictions". This change is designed to make it clear that the purpose of the Article is that suitable action should be taken so that Members may be able not merely to pursue the objective of maintaining employment, production and demand, but also to do so without resorting to trade restrictions as a means of remedying their balance of payments difficulties.

24. The words "together with appropriate action on the part of the other Members concerned" have been added to make it clear that all Members involved in the situation have a responsibility to take what action they appropriately can to assist in overcoming the difficulties.

25. There are various means by which situations of this kind can be corrected, some of which have been indicated in Section E on page 5 of the Report of the First Session (E/PC/T/33). It seems desirable, however, that wherever possible, methods which expand rather than contract international trade should be employed. With this consideration in mind, the Sub-committee has suggested the addition of the second paragraph of this Article.

Paragraphs 6 and 7

No comments, but cf. Note 17 (Czechoslovak amendment).

Note 40
26 - A

Suggested new Article. (26 - A)

The Indian Delegation proposes the insertion of the following new article after Article 26:

"26A. Quantitative Restrictions for Protective Purposes

1. Members agree that they will not impose new or intensify existing quantitative restrictions on imports for protective purposes except when such restrictions are no more restrictive in their effect than other forms of protection permissible under this Charter. Provided that no such restrictions shall, except in accordance with the provisions of paragraph 2 of Article 13, be applied to any product in respect of which the importing Member country has assumed an obligation through negotiations with any other Member or Members pursuant to Chapter V.

2. Any Member, which considers that any other Member is applying import restrictions under paragraph 1 in a manner inconsistent with the terms of that paragraph, may bring the matter for discussion to the Organization. The Member imposing restrictions shall then participate in the discussions or the reasons of its action. The Organization shall, if it is satisfied that there is prima facie case that the complaining Members' interests are adversely affected, consider the complaint. It may then recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the terms of paragraph 1. If restrictions are not withdrawn or modified in accordance with the recommendations of the Organization within sixty days, such other Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may specify."

(Note: This amendment supersedes the amendment to Article 13 proposed in New York by the Indian Delegation cf. D.C. Report page 8.)

Article 27 - Non-discriminatory administration
of quantitative restrictions.

Paragraph 1

No comments.

Paragraph 2

Note 41 The United States of America Delegation submit the
27: 2(d)
and (e) following amendment and comments to sub-paragraphs (d)
and (e) (cf. E/PC/T/W.208):

(d) Import licenses or permits, whether or not issued in connection with quotas shall not (save for purposes of operating quotas allocated in accordance with sub-paragraph (e) of this paragraph) require or provide that the license or permit be utilized for the importation of the product concerned from a particular country or source.

Moreover, such licenses or permits shall not be distributed among importing or supplying enterprises in such manner, or be subject to such conditions as to result in discrimination against any Member.¹

(e) In cases in which a quota is allocated among applying supplying countries, The shares of the various supplying Member countries should in principle be determined in accordance with commercial considerations such as price, quality and customary sources of supply. For the purpose of appraising such commercial considerations,² The Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Member countries having a substantial interest in supplying the product, shares based upon the proportions, supplied by such Member countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed, which would prevent any Member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

Comment:

1) This addition to sub-paragraph (d) is proposed in order to make it clear that the intent of the sub-paragraph is to provide that there shall be no discrimination, direct or indirect, in the administration of import license systems.

2) The guiding principle to be followed in quota allocation is set forth in sub-paragraph (a). Sub-paragraph (e) deals with the application of this principle in different words if this is all that is intended.

An objection to the mention of the principle of commercial considerations in this context is that it seems to imply that the government would have its own commercial interests in mind (as in the case of state-trading) whereas in fact governmental allocations should merely reflect the factor of commercial considerations as it may be influencing, or may have influenced, all trade, whether public or private, in the product subject to the restrictions. This application to quota allocations of the principle of commercial considerations, however, is already fully covered by sub-paragraph (c).

Note 42
27:2 (e)

The Czechoslovak Delegation proposes the following revision of sub-paragraph (e) (cf. E/PC/T/W/219):

"Par. 2 (e) In cases in which a quota is allocated among supplying countries, their shares should in principle be determined in accordance with considerations such as price, quality, transportation facilities and payment conditions, customary sources of supply etc. For the purpose of appraising such considerations, . . ."

Note 43
27:3

The Delegation of the United States of America propose to insert a revised text of sub-paragraph 3 (d) as a last sentence into the present sub-paragraph 3 (c), with the present sub-paragraph 3 (b) thus becoming sub-paragraph 3 (a). The following revision and comment have been submitted (cf. E/PC/T/W.208, page 5):

In cases [Where] in which import licenses are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licenses granted over a past recent period and the distribution of such licenses among supplying countries [Provided, however, that there shall be no obligation to supply information as to the names of importing or supplying enterprises]²

Comment:

- 1) Since paragraph 3 (a) and (c) both deal with the matter of providing information to Members regarding the administration of quantitative restrictions, it appears more logical to group these together in a single sub-paragraph.
- 2) The proposal to delete the proviso permitting withholding of the names of importing and supplying enterprises is based on the view that since the granting of licenses to particular enterprises may frequently constitute in effect a discrimination against particular countries, the names of enterprises receiving licenses should not be withheld from Members which request them.

Note 44
27:3 (b)
and (c)

The Czechoslovak Delegation submit the following

amendment and comment to paragraph 3 (b) and (c)

(cf. E/PC/T/W/219):

Par. 3 (b) In the case of import restrictions involving the fixing of quotas, the Member applying the restrictions shall give full information to interested Members of the total quantity or value . . .

Par. 3 (c) Delete the words added by the D.C. in New York.

Comment:

The Czechoslovak Delegation feels that disclosing information in the way referred to in par.3(b) and (c) through public notice might seriously damage the position of a country concerned, particularly with regard to non-Members. On the other hand it is considered as quite

adequate to supply the other Members who are interested in the particular trade with a confidential information containing all details. Should there be no important non-Member countries, Czechoslovakia would not object to a publication of such notices.

Paragraph 4

Note 45 The Chinese Delegation propose the deletion of the
27: 4 words "or under paragraph 2 (e) of Article 25" in the
first sentence of paragraph 4. (cf. E/PC/T/W.74).

Note 46 The reservation (D.C. Report, page 24) was made by
27 : 4 the delegate of China.

Paragraph 5

No comments.

Article 28 - Exceptions to the rule of
Non-Discrimination

Note 47 The United Kingdom Delegation will wish to raise
certain points in connection with this Article (c.
E/PC/T/W.211).

Paragraph 1

Note 48 The Delegation of the United States of America
28: 1 (b) propose the following revision of sub-paragraph 1 (b)
(cf. E/PC/T/W.216):

1 (b) prohibitions or restrictions in accordance with
sub-paragraph [s] 2(a) (i) [or 2 (d)] of Article 25.

Comment:

The reference to sub-paragraph 2 (d) of Article 25 has been deleted because of the proposal of the U.S. Delegation made in a separate document to delete that sub-paragraph.

Secretariat comment : cf. Note 6 above.

Note 49 The Delegation of India propose the following
28: 1(b) revision of this sub-paragraph:

for "paragraphs 2 (a) (i) or 2(d) of Article 25",
read "paragraphs 2(a) (i), 2(d) or 2(g) of Article 25".

Secretariat comment : This revision is contingent upon the suggested addition of a new paragraph 2 (g) of Article 25, referred to above in Note 15.

Note 50 The Delegation of the United States of America
28: 1 (c) propose the deletion of sub-paragraph 1 (c) in view of their proposal to add a new paragraph 7 to Article 29 (cf. E/PC/T/W.216 and Note 59 below).

Note 51 The Cuban Delegation propose the insertion of a
28: 1 (d) new sub-paragraph (d), renumbering the present sub-paragraph (d) and (e) accordingly, as follows (E/PC/T/W.194):

"(d) Conditions attaching to import which are necessary to insure that an importing Member country is enabled to pay for its imports with its own currency or the currency of any Member of the International Monetary Fund specified by the importing Member country."

Note 52 The United States of America Delegation submit the
28:1(d)(ii) following amendment and comment (cf. E/PC/T/W.216) :

1(d)(ii) assist in the period until 31 December 1951, by measures not involving a substantial departure from the provisions of Article 27, a another country whose economy has been disrupted by war:

Comment :

This change is designed to make clear the intention to cover the case of one Member helping another, but not the case of one Member helping itself.

Note 53 The Australian Delegation submit the following
28: 1(e) revision and comment to sub-paragraph 1 (e) (cf. E/PC/T/W.214) :

28. 1(e)

Restrictions in accordance with Article 26 which /both (i)/ provide a Member with additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraph 2 of Article 26, if its restrictions were consistent with Article 27, /and (ii) 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 applying restrictions on payments and transfers for current international transactions, may apply import restrictions under (i) of this sub-paragraph in special circumstances and only with the prior approval of the Organisation in agreement with the International Monetary Fund /.

Comment:

As was explained in the Report of the First Session, Part 2, Chapter III, Section C, 3(e) to (j), pages 14 and 15, the purpose in this paragraph was to deal with the problems arising from the existence of inconvertible currencies. However, as was implied in that Report, it is the country carrying on trade with other countries which have inconvertible currencies which needs to exercise discrimination and not necessarily the country which itself has an inconvertible currency.

As the paragraph is at present drafted, it requires a Member who wishes to exercise discrimination either to be already applying discriminatory exchange restrictions or else to get prior permission for the discrimination from both the Organisation and the Monetary Fund. It is suggested that since exchange restrictions and trade restrictions are to some extent alternative methods of dealing with the same problem, a country should not be required to impose

both forms of restriction if one is sufficient. Moreover, the present draft makes it easier for a country with an inconvertible currency to exercise discrimination than it is for a country which has accepted the obligations of convertibility. It seems likely that this provision would tend to encourage countries to remain inconvertible which would be a result quite contrary to that desired.

Paragraph 2

Note 54

28: 2

The Australian Delegation submit the following amendment and comment to paragraph 2 (cf. E/PC/T/W.214):

28.2.

If the Organisation 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 imports⁷ 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 country, the Member shall etc.

Comment:

It is suggested that the words enclosed in square brackets should be deleted for the following reasons.

- (a) It gives the Organisation power to disallow exchange restrictions which may have been specifically allowed by the Monetary Fund. Although perhaps unlikely in practice, it would be possible for the Organisation thus to deny a Member the right to take action which it was allowed to do by the Fund which is the body primarily concerned with exchange restrictions.
- (b) The inclusion of these words therefore appears to be inconsistent with the general attitude adopted in this section of the Charter that the Monetary Fund should be left with final responsibility in the field of exchange regulation. Paragraphs 1, 2 and 6 of Article 26 appear to bear out this general attitude.

- (c) Unless the words in square brackets are deleted from Article 28, 2, the provisions of Article 29, 6 produce the curious result that the Organisation can over-ride the opinion of the Monetary Fund if the Member concerned is also a Member of the Fund but cannot do so if the Member concerned is not a Member of the Fund, but is operating under a special exchange agreement.

Note 55

28 : 2

The Cuban Delegation proposes to DELETE the words "if it so desires" after the words "Provided that a Member may" (cf. E/PC/T/W.194).

Paragraph 3.

Note 56

28 : 3

The United States Delegation propose the following revision of this paragraph (cf. E/PC/T/W.216):

3. When three-quarters of the Members of the Organization have accepted the obligations of Sections 2, 3 and 4 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 any discrimination under paragraphs 1(e)(i) and (ii) of this Article which restricts the expansion of world trade⁷.

Comment:

The last clause has been omitted to eliminate the possible interpretation that it is the wisdom rather than the continued necessity for discriminatory import restrictions which is to be reviewed.

Note 57

28 : 3

The countries represented by the delegates objecting to the words "which restricts the expansion of world trade" (D.C. Report, page 24) were not identified in the original report of the Drafting Committee.

Article 29 - Exchange Arrangements

Paragraph 1

Note 58
29: 1

The Delegation of the United States of America

submits the following amendment and comment to this paragraph (cf. E/PC/T/W.216, page 5).

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] jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the [competence] jurisdiction of the Organization. In all cases in which the Organization is called upon to consider or deal with balance-of-payments problems the Organization shall consult the International Monetary Fund fully regarding the problem. After such consultation the Organization shall accept the determination of the International Monetary Fund as to all facts relating to exchange controls or restrictions, as to statistics regarding general international balance-of-payments or the balance of payments of any Member, and as to the analysis of the balance-of-payments position.

Comment:

The first two amendments are designed to avoid ambiguity, since the word "competence" is used with a different meaning in paragraph 3(d) of Article 26 and in paragraph 2 of Article 28. The two new sentences proposed for addition to the paragraph are designed to clarify the function of the Fund when consulted on balance of payments questions, and to relieve the Organization of the necessity of building up a separate staff of technical experts who would duplicate the work of the Fund experts. Acceptance of this amendment would make it possible to delete many references to consultation with the Fund, particularly in Article 26.

Paragraphs 2, 3, 4, 5 and 6 :

No comments.

Suggested new paragraph 7 :

Note 59
29 : 7

The Delegation of the United States of America propose the insertion of a new paragraph 7 with the following text (cf. E/PC/T/W.216, pages 5 and 6).

7. Nothing in this Section is intended to preclude a Member from requiring that its exporters accept only its own currency or the currencies of any one or more members of the International Monetary Fund, as it may specify in payment for exports.

Comment:

This provision constitutes, in substance, paragraph 1 (c) of Article 28 of the New York draft. It is misplaced in Article 28, since it does not constitute an exception to the rule of non-discrimination on quotas. As rephrased here, it is clearly an exchange matter rather than a provision involving quantitative restrictions, and would therefore belong most appropriately in Article 29.

Secretariat comment : For the corresponding change in Article 28, paragraph 1 (c) see above under Note 50.

Suggested new Article 29 - A

Note 60
29 - A

The proposal to insert a new article after Article 29 (cf. D.C. Report, page 25) was made by the delegate for China.