DRAFT REPORT

THE DISCRIMINATORY APPLICATION OF IMPORT RESTRICTIONS UNDER TRANSITIONAL PERIOD ARRANGEMENTS OF ARTICLE XIV.

Amendments proposed by the Delegation of the United States

I. INTRODUCTION

(a) Change last sentence Paragraph 2 to read as follows: "The reports of the individual countries on their import restrictions and on the discriminatory methods they have employed will be found in Annex A of this report."

(b) Delete South Africa from the sterling area countries listed in Paragraph 3(1) and include under a separate category.

II. AUTHORITY TO DISCRIMINATE

(a) Change Paragraph 4, line 5, to read "it is recognized that the aftermath of the war".

(b) Add at the end of Paragraph 4 the following: "Departures from the rule of non-discrimination under Paragraph 1(a) of Annex J are subject to the conditions that (1) substantially higher levels of delivered prices are not paid for the additional imports obtained as a result of the discriminatory relaxation of restriction than those ruling for comparable goods regularly available from other contracting parties, (2) the discriminatory action does not involve arrangements which appreciably reduce the hard currency receipts from exports of the contracting party relaxing its restrictions, and (3) the action does not cause unnecessary damage to the commercial or economic interests of any other contracting party. Article XIV 1(f) qualifies the right to adopt discriminatory practices under sub-paragraphs (b) and (c) of Article XIV, Paragraph 1, or Annex J, by providing that a contracting party may discriminate under these provisions only so long as it is availing itself of the post-war transitional period arrangements under Article XIV of the Articles of Agreement of the International Monetary Fund or of an analogous provision of a special exchange agreement. The basic principle
in accordance with which discriminatory import restrictions are to be applied is set forth in Article XIV 1(e), which provides that policies applied in the use of such restrictions shall be designed to promote the maximum development of multilateral trade possible during the period, and to expedite the attainment of a balance-of-payments position which will no longer require resort to quantitative import or transitional exchange arrangements.

III. THE PURPOSE OF DISCRIMINATORY ACTION

Amend Section III as follows: "Contracting Parties may institute, maintain or intensify import restrictions under Article XII, Paragraph 2(a), to forestall or stop a serious decline in their monetary reserves, or, in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. Such restrictions are being applied by contracting parties either by imposing restrictions on imports from all countries and currency areas in a substantially uniform manner and degree, or by departing from the rule of non-discrimination on the basis of balance-of-payments considerations along lines which, generally speaking, impose substantial restrictions on imports from certain countries, while no restriction or lesser restrictions are imposed on imports from other sources. In the former case the provisions of Article XIV or of Annex J are not invoked. These latter provisions are designed to meet situations in which, owing to failure of a country to earn amounts of various currencies corresponding to the amounts that its importers would desire to spend under a regime of unrestricted or uniformly restricted importation, and when the country cannot obtain such amounts of currency through convertibility, strict observance of the rule of non-discrimination might result in a contraction of imports from some sources while the country in question still possessed unutilized means of financing such imports. If such a country is pursuing trade policies calculated to achieve maximum income in convertible currencies or in currencies which its importers would desire to spend in the absence of discriminatory import restrictions, it may be claimed that by departure from the rule of non-discrimination contained in Article XIII it has been possible to bring about an increase in the total trade of such a country."
It is evident from a review of the information supplied in response to the Secretariat's inquiry that the action taken under the provisions of Article XIV and Annex J has been mostly directed towards reducing purchases in convertible currencies notably in United States dollars and Swiss francs and in other relatively hard currencies such as Canadian dollars and Belgian francs, or towards avoiding unfavorable trade balances that would require settlement in these currencies or in gold. In other words, the demand for such currencies either for trade or reserve purposes has exceeded the supply among the countries replying to the Secretariat's questionnaire who are in balance-of-payments difficulties.

IV. THE METHODS EMPLOYED

Amend Section IV, as follows:

8. An examination of the answers to Questions 2 and 3 of the Secretariat's inquiry, contained in Annex A, shows that the contracting parties have employed two basic methods of discriminating between sources of supply, namely, by unilateral action including State trading operations, and through bilateral agreements or group arrangements. Irrespective of which of these procedures is followed, action under Article XIV has had the inevitable effect, so far as trade among the contracting parties is concerned, of encouraging trade among the 22 countries applying restrictions while keeping down the levels of their imports from others and, particularly, from the hard currency areas.

(i) The Practice of Discrimination through Unilateral Administrative Decisions,

9. The administrative basis of all restriction is a general prohibition of imports. To this general prohibition, some countries grant exemption for imports from some or all soft-currency sources or for certain products from all sources, but for the most part exceptions to the prohibition are regulated by the issue of licences pertaining to specific transactions.

10. If the restrictions have been applied for balance-of-payments reasons, the fundamental consideration in the issue of licences is, perforce, the actual or prospective availability of the currency in which payment is to be made. Licences are generally not granted for imports from hard-currency countries unless it can be shown that the
goods are deserving of a high degree of priority, for example, essential foodstuffs, fuel, raw materials or essential industrial or agricultural equipment.

11. Article XIII of the GATT provides for the use of quota arrangements, either on a global or country-by-country basis in connection with the restriction of imports on balance-of-payments ground in preference to the licencing of imports on an ad hoc item-by-item basis without the establishment of quotas. Under such a system the controlling authority may also establish quotas for various products and allocate them among supplying countries in relation to the amounts of various currencies that will be earned on current transactions during the period in question. In some countries (France, Netherlands, Sweden) licences are issued in accordance with a pre-determined "plan" or "program", rather than in accordance with quotas. When quotas are applied or import programs established on a unilateral basis they are usually subject to frequent revision in accordance with the availability of the currency required for payment. As is further indicated below, significant procedural differences appear to exist in many of the countries reporting in respect to the treatment of hard and soft currency imports respectively.

12. Discrimination enters also into the operations of state-trading agencies, for decisions to purchase are governed by the availability of currencies as well as by the usual commercial considerations. In Czechoslovakia, where foreign trade is in the hands of monopoly companies, and in the United Kingdom, where about half of total imports are purchased by State agencies, discrimination among sources of supply for balance-of-payments reasons is an important feature of import policy. In some instances (United Kingdom, Norway, and France) state-trading was a hold-over from the regime of war and immediate postwar controls, the objective being to return as quickly as possible the items now imported under state trading to private importation.

(ii) The Practice of Discrimination through Bilateral and Group Arrangements.

13. A large part of the trade of contracting parties in Europe and South America is arranged bilaterally, or through groups. A means by which discrimination may be effected, appears in the schedules of commodities and the quotas contained in their trade agreements. The agreements are negotiated mostly between soft-currency countries, though
there are exceptions such as those negotiated by Belgium and Switzerland and some of the South American Republics. Where quotas are fixed in this manner, involving commitments to issue licences up to the limit of specified quantities or values, there may or may not be intentional discrimination.

14. In cases where import quotas are included in bilateral agreements they are normally an integral part of a discriminatory pattern of trade restrictions intended to expand trade with trading partners in a manner calculated to avoid the risks of the loss of scarce currencies which one or both parties to the agreements feel must be conserved for purchases of more essential supplies from other countries, particularly in the convertible currency areas. The result of these arrangements is that country A may admit quite freely certain goods of a relatively lower order of essentiality from country B, its partner in a bilateral agreement, than from country C with which it has no bilateral because it feels that such imports may entail the risk of depleting its hard currency reserves. Since these import concessions may be accompanied by commitments on the part of the trading partners to deliver to each other certain more essential goods in return for import concessions for goods of lesser essentiality, strong and probably cumulative tendencies are established for trade expansion along bilateral lines. Whether these results will be paralleled by an absolute as well as a relative diminution of exports to others, notably the hard currency areas, of course depends upon the rate of over-all increase in production, the flexibility of the bilateral arrangements and the extent to which import and export quotas are actually fulfilled. Since many of the products included in bilateral quotas are subject to state trading arrangements, sometimes involving more or less long term bulk purchase contracts, the extent to which short run commercial considerations may play a part in mitigating the influence of bilateral arrangements on trade may be reduced. Representatives of several countries employing bilateral arrangements on an extensive scale pointed out, however, that increases in production have enabled them to exploit their dollar markets to the full extent permitted by considerations of domestic requirements and that bilateral commitments have not interfered with such exploitation. Devaluation was pointed to as perhaps the most drastic action that would be taken to assure the maximization of dollar sales. However, it was not
definitely established that bilateral arrangements plus continuing relatively high prices in certain soft currency markets may not be attracting goods to such markets which might find a dollar market, albeit possibly at lower prices, and thus serve to reduce balance-of-payments difficulties.

15. Contracting parties operating under Article XIV or Annex J have not, of course, found it possible to employ non-discriminatory quotas because of exchange difficulties with certain countries. This factor, however, need not preclude the establishment of a non-bilateral quota in which all suppliers with which the country applying the quota has no payments difficulties may participate. However, in many instances, the unwillingness of trading partners to grant concessions to imports of countries that in return only offer a share in a non-bilateral quota available as well to other countries, has resulted in preventing the use of non-bilateral quotas even for imports from countries with which no balance-of-payments difficulties exist.

In the case of Canada, the establishment of quotas by currency areas rather than on a global basis even for the portion of her imports not subject to the provisions of Annex J, is based on the desire to re-establish traditional prewar patterns of import trade in place of the trade patterns that emerged immediately after the war as a result of the superior competitive position and productive capacity of the dollar area. When such currency area quotas are based on prewar trade patterns, substantial redistribution of imports may result as compared with the pattern that would have resulted from the application of global quotas, unrestricted importation or open general licencing arrangements.

16. In the Secretariat's enquiry governments were invited to forward copies of their trade and payments agreements which have a bearing on the operation of their import restrictions. Seven countries (Czechoslovakia, Denmark, Finland, France, Netherlands, Norway and the United Kingdom) submitted copies of agreements in response to this request. In all, copies of about 240 agreements were received. Of these nearly 100 may be classed as payments or financial agreements. Of the trade agreements, the great majority incorporate some commitments in respect of the issue of licences. These commitments vary from an estimate or target for total imports in a specified period of time, or a schedule of quotas for products for which the importing government is prepared to issue licences to an undertaking to purchase or supply fixed quantities of certain commodities.
17. Note: We suggest that the portion of the Secretariat's draft on Group Arrangements (Section V) follow here. We suggest the following changes in the Secretariat's draft.

(a) Amend second sentence Paragraph 15 to read: "The financial arrangements have in each case been accompanied by exemptions or reductions in import restrictions for the members of the group while maintaining the restrictions against outside countries."

(b) At end of last sentence Paragraph 16 add "supplemented by comparatively free capital movements."

(c) In sixth line of Paragraph 18 after "trade" insert "within the group."

(d) Amend the last sentence of Paragraph 18 to read: "This removal of restrictions has been facilitated by the alleviation of payments difficulties by means of the Intra-European payment scheme under which the currencies required by debtor countries on Intra-European account have been provided by their creditors who in turn have received dollar compensation under the European Recovery Program."

(e) Amend first part of last sentence of Paragraph 19 to read: "It is expected that these divergencies will be eliminated as a more comprehensive program is developed and, meanwhile, it has been agreed in principle that the liberalization will be extended further during 1950, provided a satisfactory agreement is reached on the establishment of a clearing union to replace the present Payments Scheme."

(iii) Problems Common to Unilateral and Bilateral Systems.

18. Procedures in the reporting countries for admitting hard currency imports usually involve a unilateral administrative decision in respect to each application for a licence. It is not clear in every case that balance-of-payments difficulties require this divergence from the procedure suggested by Article XIII. The relative freedom permitted on importation from the soft currency area by countries discriminating under Article XIV and Annex J as compared with the careful scrutiny of imports from the hard currency area has apparently resulted in some measure of procedural discrimination against hard currency imports though it is not clear that the administrative complexities connected with importation from the hard currency area have thus far resulted in decreasing such imports below the level established by balance-of-payments considerations. Comparable imports from the soft currency area
may be under a system relatively free of administrative detail. Usually
lists of items that may, under this payments criterion, be imported
from the hard currency area are established by the licensing authority
but the amount and value of the imports are not programmed in advance
except for relatively short periods. In some instances as in the case
of New Zealand it was indicated that the types of goods imported from
the dollar area do not lend themselves to the use of quotas or to any
significant degree of import planning since they consist largely of
capital equipment the importation of which is non-repetitive and the
physical characteristics and sources of supply are largely pre-
determined by the uses to which the items are to be put.

19. Another common problem in many countries limiting imports by
quantitative controls either on a discriminatory or non-discriminatory
basis is the domestic distribution or allocation of the restricted
imports. The need for restrictions of course implies that the
internal effective demand for the products in question exceeds the
corresponding foreign exchange made available for its procurement.
In event a quota system is employed to control such importation based
on a previous representative period, it may of course be possible to
allow each importer to bring in the same portion of his imports from
each country as in the base period, his total imports being adjusted
according to the reduction (or increase) in the country's total imports
of the product as compared with the base period. However, in the absence
of a quota arrangement for total imports, or, as is usually the case,
if the structure of domestic demand has substantially changed as
compared with a previous period which has been deemed representative for
allocation of imports as between foreign countries, some different
principle of domestic allocation may have to be applied. For example,
the representative period selected for determining the internal
distribution of import licences may be different from that used to
determine the sources from which the imports are obtained. Another
system namely the auction of import licences has been suggested, but
experience as to its efficacy is lacking.

20. Information furnished has indicated that contracting parties which
have elected to discriminate under Annex J have implemented the
pricing provisions of that Annex in varying degrees and by different
administrative procedures. In respect to Canada, for example,
commodities imported under the provisions of Annex J and which would
otherwise have been procured in a soft currency market are not
permitted to enter from such sources if prices available therein
exceed by more than a reasonable margin prices available in hard
currency areas. In the case of the United Kingdom, besides general
scrutiny and comparison of relative prices in the hard and soft
currency areas, commodities being procured in the hard currency area
have not in some cases been transferred to soft currency procurement
if available prices were substantially higher in soft currency markets.
Several contracting parties reporting on this matter indicated that
self-interest would require due attention to relative prices in the
hard and soft currency markets regardless of the provisions of
Annex J. Some of the contracting parties (Southern Rhodesia and Union
of South Africa) operating under the provisions of Annex J have lists
of commodities for which import licenses from hard currency countries
may not normally be issued. It was indicated that some administrative
flexibility exists with respect to the administration of these lists,
but it is apparent that the use of such lists might tend to limit the
application of the price criterion of Annex J. The contracting
parties availing themselves of the provisions of Paragraph 1(b) and (c)
of Article XIV as a basis for imposing discriminatory import
restrictions expressed the desire of their governments to obtain
imports at lower prices whenever the limitations imposed by their
foreign exchange availabilities permitted such action. In general,
however, this group of countries, while emphasizing the importance of
price and other commercial considerations in procurement in currency
areas with which they had no payments difficulties, indicated that it
was frequently necessary to pay higher prices in soft currency areas in
order to conserve their hard currency reserves. In some cases price
comparability between the hard and soft currency areas appears to play
an insignificant role in the determination of sources of imports.
Contracting parties establishing quotas for export and import under
bilateral agreements indicated that the allocation of imports under
such quotas was usually affected by price and other commercial
considerations. The importance of such considerations is limited,
however, by the desire of such countries to insure export markets for
products of lesser essentiality and to attain a higher level of foreign
development with their various trading partners. It was pointed out by
several of the delegations that currency devaluation has substantially
reduced the degree of price discrepancy which formerly prevailed
between hard and soft currency markets.
21. Contracting parties operating under the provisions of Annex J have not all adopted uniform criteria in respect to the countries against whose imports they discriminate. In the case of sterling area countries, for example, discrimination is carried out by each member against those countries with which the sterling area as a whole is in balance-of-payments difficulties or, in other words, against countries whose currencies are hard relative to sterling. Thus, even though a sterling area country may have an active trade balance with a country outside the area, it may, nevertheless, limit imports from such a country possibly below its earnings of the country’s currency if the sterling area as a whole does not earn sufficient of the country’s currency to permit non-discriminatory admission of the country’s imports. Canada, on the other hand, to the small extent that she employs the provisions of Annex J to limit her hard currency imports, discriminates against those countries which are not themselves in balance-of-payments difficulties.

EFFECTS OF DISCRIMINATION

Section VI.

Add at end of Paragraph 20 a sentence to read: "It is of course impossible to disassociate the effects on trade of the discriminatory restrictions from the trade patterns under which they developed."

Note — We would favor attaching as Annexes the full texts of the country submissions with such omissions as may be desirable in a public report. In this case the statistical materials on pages 11-13 and the resumes contained in the present annex would be deleted. If the resumes are to be retained it is felt they should be supplemented with certain of the facts brought out in the discussions of Working Party E.