THIRD COMMITTEE: COMMERCIAL POLICY

ARTICLES 40, 41 AND 43

(Text approved in second reading)

Article 40

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a Member under or pursuant to this Chapter, including tariff concessions, any product is being imported into the territory of that Member in such relatively increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the Member shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a Member in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a Member which receives or received such preference, the importing Member shall be free, if that other Member so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any Member shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the Member which has requested the action. In circumstances of special urgency, where delay would cause damage which it would be difficult to repair, such action may be taken provisionally without prior consultation, on the condition that consultation /shall be affected
shall be effected immediately after the taking of such action.

3. (a) If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, or, in the case envisaged in paragraph 1(b) of this Article to the trade of the Member requesting such action, of such substantially equivalent obligations or concessions under this Chapter, the suspension of which the Organization does not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a Member to the domestic producers of products affected by the action, that Member shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such obligations or concessions as may be necessary to prevent or remedy the injury.

4. Nothing in this Article shall be construed (a) to require any Members, in connection with the withdrawal or modification by such Member of any concession negotiated under Article 17, to consult with or obtain the agreement of Members other than those Members which are parties to the General Agreement on Tariffs and Trade, or (b) to authorize any such other Members, not parties to that Agreement, to withdraw from or suspend obligations under this Charter by reason of the withdrawal or modification of such concession.

INTERPRETATIVE NOTE

Article 40

It is understood that any suspension, withdrawal or modification under 1(a), 1(b) and 3(b) must not discriminate against imports from any Member, and that such action should avoid, to the fullest extent possible, injury to other supplying Member countries.

Article 41

Consultation

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange
exchange regulations, internal price regulations, subsidies, practices and regulations affecting the freedom of transit, state-trading operations, sanitary laws and regulations for the protection of human, animal or plant life or health and generally all matters affecting the operation of this Chapter.

**INTERPRETATIVE NOTE**

**Article 41**

The provisions for consultation require (subject to the exceptions specifically set forth in the Charter) Members to supply to other Members, upon request, such information as will enable a full and fair appraisal of the matters which are the subject of such consultation, including the operation of sanitary laws and regulations for the protection of human, animal or plant life or health, and other matters affecting the operation of Chapter IV.

**Article 43**

**General Exceptions to Chapter IV**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Member of measures

   (a) (i) necessary to protect public morals;
   (ii) necessary to the enforcement of laws and regulations relating to public safety;
   (iii) necessary to protect human, animal or plant life or health;
   (iv) relating to the importation or exportation of gold or silver;
   (v) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to customs enforcement, the enforcement of monopolies operated under Section D of this Chapter, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
   (vi) relating to the products of prison labour;
   (vii) imposed for the protection of national treasures of artistic, historic or archaeological value;
   (viii) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
   (ix) undertaken in pursuance of any inter-governmental agreement relating solely to the conservation of fisheries resources, migratory birds.
migratory birds and wild animals; Provided that these measures are subject to the requirements of paragraph 1 (d) of Article 67;

(x) undertaken in pursuance of the terms of intergovernmental commodity agreements concluded in accordance with the provisions of Chapter VI; or

(xi) involving restrictions on exports of domestic materials necessary to assure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not be instituted by any Member, except after consultation with other interested Members with a view to appropriate international action.

2. Measures instituted or maintained under paragraph 1 (b) of this Article which are inconsistent with the other provisions of this Chapter shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than at a date to be specified by the Organization; Provided that such date may be deferred for a further period or periods, with the concurrence of the Organization, either generally or in relation to particular measures taken by Members in respect of particular products.