THIRD COMMITTEE: COMMERCIAL POLICY

CHAPTER IV: COMMERCIAL POLICY

DRAFT REPORT TO THE CONFERENCE

PART II
(continued)

This part of the draft Report of Committee III contains the Interpretative Notes, as approved after consideration of the Report of the Central Drafting Committee, to the text of Articles 18 to 22 and 25 to 38, which were issued in document E/CONF.2/C.3/89.
Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article 18.

Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments and authorities within the territory of a Member is subject to the provisions of paragraph 3 of Article 99. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article 18, are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article 18, the term "reasonable measures" would permit a Member to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties.

Paragraph 2

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and on the other hand, a directly competitive or substitutable product which was not similarly taxed.

Paragraph 5

Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.
Ad Article 20

Paragraph 2 (a)

In the case of products which are basic to diet in the exporting country and which are subject to alternate annual shortages and surpluses, the provisions of paragraph 2 (a) do not preclude such export prohibitions or restrictions as are necessary to maintain from year to year domestic stocks sufficient to avoid critical shortages.

Paragraph 2 (c)

The expression "agricultural and fisheries product, imported in any form" means the product in the form in which it is originally sold by its producer and such processed forms of the product as are so closely related to the original product as regards utilization that their unrestricted importation would make the restriction on the original product ineffective.

Paragraph 3 (b)

The provisions for prior consultation would not prevent a Member which had given other Members a reasonable period of time for such consultation from introducing the restrictions at the date intended. It is recognized that, with regard to import restrictions applied under paragraph 2 (c) (ii), the period of advance notice provided would in some cases necessarily be relatively short.

Paragraph 3 (d)

The term "special factors" in paragraph 3 (d) includes among other factors changes in relative productive efficiency as between domestic and foreign producers which may have occurred since the representative period.

Ad Article 21

With regard to the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulation of their foreign trade, it was considered that the text of Article 21, together with the provision for export controls in certain parts of this Charter, for example, in Article 43, fully meet the position of these economies.

Ad Article 22

Paragraphs 2 (d) and k

The term "special factors" as used in Article 22 includes among other factors the following changes, as between the various foreign producers,
which may have occurred since the representative period:

1. changes in relative productive efficiency;
2. the existence of new or additional ability to export; and
3. reduced ability to export.

Paragraph 3

The first sentence of paragraph 3 (b) is to be understood as requiring the Member in all cases to give, not later than the beginning of the relevant period, public notice of any quota fixed for a specified future period, but as permitting a Member, which for urgent balance-of-payments reasons is under the necessity of changing the quota within the course of a specified period, to select the time of its giving public notice of the change. This in no way affects the obligation of a Member under the provisions of paragraph 3 (a), where applicable.
Paragraph 1

Note 1

Different prices for sales and purchases of products in different markets are not precluded by the provisions of Article 30, provided that such different prices are charged or paid for commercial reasons, having regard to differing conditions, including supply and demand, in such markets.

Note 2

Sub-paragraphs (a) and (b) of paragraph 1 shall not be construed as applying to the trading activities of enterprises to which a Member has granted licenses or other special privileges:

(a) solely to ensure standards of quality and efficiency in the conduct of its external trade; or

(b) for the exploitation of its natural resources;

provided that the Member does not thereby establish or exercise effective control or direction of the trading activities of the enterprises in question, or create a monopoly whose trading activities are subject to effective governmental control or direction.

Ad Article 31

Paragraphs 2 and 4

The maximum import duty referred to in paragraphs 2 and 4 would cover the margin which has been negotiated or which has been published or notified to the Organization, whether or not collected, wholly or in part, at the custom house as an ordinary customs duty.

Paragraph 4

With reference to the second proviso, the method and degree of adjustment to be permitted in the case of a primary commodity which is the subject of a domestic price stabilization arrangement should normally be a matter for agreement at the time of the negotiations under paragraph 2 (a).

Ad Article 32

Paragraph 1

The assembly of vehicles and mobile machinery arriving in a knocked-down condition or the disassembly (or disassembly and subsequent reassembly) of bulky articles shall not be held to render the passage of such goods outside the scope of "traffic in transit", provided that any such operation is undertaken solely for convenience of transport.
Paragraphs 3, 4 and 5

The word "charges" as used in the English text of paragraphs 3, 4 and 5 shall not be deemed to include transportation charges.

Paragraph 6

If, as a result of negotiations in accordance with paragraph 6, a Member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs of Article 32, such special facilities may be limited to the landlocked country concerned unless the Organization finds, on the complaint of any other Member, that the withholding of the special facilities from the complaining Member contravenes the most-favoured-nation provisions of this Charter.

Ad Article 33

Paragraph 1

Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

Paragraphs 2 and 3

Note 1

As in many other cases in customs administration, a Member may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

Note 2

Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country’s currency which may be met by action under paragraph 2. By “multiple currency practices” is meant practices by governments or sanctioned by governments.

Ad Article 34

Paragraph 3

Note 1

It would be in conformity with Article 34 to presume that "actual value" may be represented by the invoice price (or, in the case of government contracts...
in respect of primary products, the contract price), plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount, or any reduction from the ordinary competitive price.

Note 2.

If on the date of this Charter a Member has in force a system under which ad valorem duties are levied on the basis of fixed values, the provisions of paragraph 3 of Article 33 shall not apply:

1. in the case of values not subject to periodical revision in regard to a particular product, as long as the value established for that product remains unchanged;

2. in the case of values subject to periodical revision, on condition that the revision is based on the average "actual value" established by reference to an immediately preceding period of not more than twelve months and that such revision is made at any time at the request of the parties concerned or of Members. The revision shall apply to the importation or importations in respect of which the specific request for revision was made, and the revised value so established shall remain in force pending further revision.

Note 3.

It would be in conformity with paragraph 3 (b) for a Member to construe the phrase "in the ordinary course of trade", read in conjunction with "under fully competitive conditions", as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

Note 4.

The prescribed standard of "fully competitive conditions" permits Members to exclude from consideration distributors' prices which involve special discounts limited to exclusive agents.

Note 5.

The wording of sub-paragraphs (a) and (b) permits a Member to assess duty uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

Paragraph 5.

If compliance with the provisions of paragraph 5 would result in decreases in amounts of duty payable on products with respect to which the rates of duty have been bound by an international agreement, the term "at the earliest practicable
practicable date" in paragraph 2 allows the Member concerned a reasonable time to obtain adjustment of the agreement.

Interpretative Notes

Ad Article 35

Paragraph 3

While Article 35 does not cover the use of multiple rates of exchange as such, paragraphs 1 and 3 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a Member is using multiple currency exchange fees for balance-of-payment reasons not inconsistently with the Articles of Agreement of the International Monetary Fund, the provisions of paragraph 2 fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date.