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 texts of the following Articles, as well as the Interpretative Notes pertaining to them, as approved after consideration of the Reports of the Central Drafting Committee:

Section F - Articles 40, 41 and 43.
SECTION F - SPECIAL PROVISIONS

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), 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, 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 regard to a concession relating 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, action under paragraph 1 may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking 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
envisaged in paragraph 1 (b), to the trade of the Member requesting such action, of such substantially equivalent obligations or concessions under or pursuant to this Chapter the suspension of which the Organization does not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a), where action is taken without prior consultation under paragraph 2 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 Member, in connection with the withdrawal or modification by such Member of any concession negotiated pursuant to Article 17, to consult with or obtain the agreement of Members other than those Members which are contracting parties to the General Agreement on Tariffs and Trade, or (b) to authorize any Member which is not a contracting party to that Agreement, to withdraw from or suspend obligations under this Charter by reason of the withdrawal or modification of such concession.

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 regulations, internal price regulations, subsidies, transit regulations and practices, state trading, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally with respect to all matters affecting the operation of this Chapter.

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 Member 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
(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, trade marks 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) taken in pursuance of inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VII;
(x) taken in pursuance of any inter-governmental agreement which relates solely to the conservation of fisheries resources, migratory birds or wild animals and which is subject to the requirements of paragraph 1 (d) of Article 67; 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 operate to increase the exports of or the protection afforded to such domestic industry and shall not depart from the provisions of this Chapter relating to non-discrimination;
(b) (i) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with any general intergovernmental arrangements directed to an equitable international distribution of such products or, in the absence of such arrangements, with the principle that all Members are entitled to an equitable share of the international supply of such products;
(ii) essential to the control of prices by a Member country experiencing shortages subsequent to the Second World War; or
(iii) essential to
(iii) essential to the orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member country, or of industries developed in any Member country owing to the exigencies of the Second World War which it would be uneconomic to maintain in normal conditions; Provided that such measures 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) 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.
Interpretative Note

Ad Article 40

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

Ad Article 41

The provisions for consultation require, subject to the exceptions specifically set forth in this 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 application of Chapter IV.