SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

Draft Charter

The Delegation of the United States of America submit the following proposals for amendment of Articles 34, 36 and 38 of the Draft Charter:

SECTION F: EMERGENCY PROVISIONS - CONSULTATION

Article 34

Emergency action on imports of particular products.

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

2. 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 sixty 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, of such obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In cases of abuse the Organization may authorize an affected Member to suspend obligations or concessions in addition to those which may be substantially equivalent to the action originally taken.

COMMENT:

The proposed amendment to paragraph 3 would leave to the Organization the decision as to what compensatory action would be appropriate in the circumstances without envisaging, as does the present draft, that the privileges of the Article will be abused.

Article 36

Contractual relations with non-Members.

Treatment of the trade of non-Members.

NOTE: The following additions and deletions are based upon the text of this Article in the U.S. draft charter, as adopted as a basis of discussion in the first meeting of the Preparatory Committee and as reproduced on page 31 of the Report of the Drafting Committee.

1. No Member shall seek exclusive or preferential advantages for its trade in the territory of any non-Member which would so as to result, directly or indirectly, in discrimination in that territory against the trade of any other Member the application by such non-Member to any Member of measures which, if applied by a Member, would be inconsistent with the provisions of this Charter. (1)
2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member would be contractually entitled to any of the benefits provided to Members by virtue of this Charter Chapter V.

3. With regard to countries which, although eligible for membership have not become Members or have withdrawn from the Organization, No Member shall, except with the concurrence of the Organization, apply to the trade of any other country which, although eligible for membership, has not become a Member or has withdrawn from the Organization, the tariff reductions effected by such Member pursuant to Article 24. This paragraph shall become effective upon the expiration of one year from the date on which the Organization is established: Provided, That this period may be extended by the Organization for further periods not to exceed six months each.

4. The provisions of paragraphs 2 and 3 of this Article shall become effective upon the expiration of one year from the day on which this Charter enters into force: Provided, That this period may be extended by the Organization, in respect of the relations of any Member with any non-Member, for such further periods as the Organization may prescribe. At any time before the expiration of any such period, a Member may request the Organization in writing for such an extension, in which event the period will be considered to be extended until a reply is received from the Organization. If the Organization disapproves the extension requested, the Member shall then be free, not later than sixty days from the day on which notice of such disapproval is received, to withdraw from the Organization, to withdraw from the Organization effective upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization.
4. Members undertaken to review shall terminate at the earliest possible date any international obligations they may have with non-Members which would prevent them from giving full effect to paragraphs 1 and 2 of this Article the provisions of this Charter, and, if necessary for that purpose, to terminate such obligations either by agreement or in accordance with their terms.

COMMENT:

(1) Under the present draft this obligation might have been interpreted to refer to ordinary commercial contracts or other matters not subject to the provisions of the Charter. The proposed change should make the original purpose clear.

(2) The proposed change limits the application of this provision to the principal commercial benefits which are granted by Members to other Members by virtue of the Charter. The broader wording of the earlier draft was subject to the objection that it would require the renegotiation or renunciation of agreements with non-Members even though such agreements could not be considered harmful to the interests of other Members.

(3) This change is made in the interest of better drafting and does not affect the substance of the earlier draft.

(4) The deleted sentence has been moved to the new paragraph 4.

(5) The purpose of this change is:

a. To provide a mechanism for the extension of the period before which the provisions of paragraphs 2 and 3 come into force, and

b. to enable Members to appraise the effects of the application of paragraphs 2 and 3 in the light of the known membership of the Organization and to withdraw from membership if the disadvantages to them arising from the application of this Article would outweigh the advantages of membership.

(6) The effect of the changes proposed in this paragraph is to omit from an Article relating to non-Members any reference to the revision of obligations between Members, to extend the termination of obligations with non-Members to include any obligation conflicting with the Charter, and to avoid unnecessary delays in carrying out the provisions of the paragraph.
SECTION I - TERRITORIAL APPLICATION

Article 38: Territorial application of Chapter V - Frontier traffic-Customs Unions

1. The provisions of Chapter V shall apply to the customs territories of the Members. If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as though it were a separate Member for the purpose of interpreting the territorial application of the provisions of Chapter V.

COMMENT:

This change is intended to remove possible ambiguity in the former wording.

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