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

COMMISSION B.

SUB-COMMITTEE ON ARTICLE 30.

WORKING PAPER

The following paper outlines the matters referred by the Commission to the Sub-Committee.

Documentation:

The Annotated Agenda used by the Commission is E/PC/T/W.190, and the following documents give amendments submitted by various delegations:

- Canadian " 140
- Chinese " 72
- Cuban " 186
- Czechoslovak " 201
- Indian " 81
- United Kingdom " 182
- United States " 185

The Verbatim of the Commission discussion on this Article 30 is found in B/PV/10 and B/PV/11, and the Summary Records are numbered B/SR/10 and B/SR/11 respectively.

GENERAL NOTES.

1. Exercise of Functions in light of provisions of Article 8:

The Report of the Sub-Committee on Chapter III T/95 recommends that Article 30 be re-examined to ensure that the drafting adequately meets the requirements of Article 8 (formerly Article 7) which provides:

"Safeguards for Members Subject to External Deflationary Pressure.

The Organization shall have regard, in the exercise of its functions as defined elsewhere in this Charter, to the need of Members to take action within the provisions of this Charter to safeguard their economies against deflationary pressure in the event of a serious or abrupt decline in the effective demand of other countries."

This matter was referred by Commission B to this Sub-Committee. (Statements in Commission by delegations are found in verbatim (B/PV/10, pages 3-6).) There are a number of instances in Article 30 where the Organization has functions in the exercise of which it might be able to safeguard the economies of members under the circumstances mentioned in Article 8:
Para. 1(a) - whether serious prejudice to the interest of any other member is caused or threatened by such subsidization.

2(b) - whether extension of time for an export subsidy should be granted.

4 - whether a special difficulty of the kind referred to in Chapter VII exists: and, if the procedures of Chapter VII fail, whether the provision of paragraph 2 of Article 30 should be suspended.

5 - consultation re adjustment of base period or reappraisal of special factors involved in considering effect of an export subsidy on world trade.

Para. 3 - refers to determination by Organization, on the basis of specific criteria, as to whether a stabilization scheme involves an export subsidy.

It will be noted that under paragraph 6 the Organization makes determinations under this Article 30 by consulting "the Members substantially interested in the product concerned" (Article 66 (4)). It was pointed out by one delegate that no change would be necessary in the wording of the Article to meet the points raised by the Sub-Committee on Chapter III, but that it would be sufficient if the Organization were to exercise leniency in making determinations.

If the Sub-Committee accepts this view no changes are necessary.

2. Reference in Article 15 to subsidies under Article 30:

The United States delegation proposed the following addition to Paragraph 5 of Article 15:

"Moreover, the provisions of this Article shall not apply to governmental purchases in carrying out any form of subsidy permitted under Article 30."

As this is being dealt with by the Sub-Committee dealing with Article 15, the matter was left in abeyance by Commission B.

Par

One delegation suggested the deletion of this paragraph but the Commission decided to retain it (Discussion is recorded in verbatim - (B/PV/10) - pages 8 to 15).

Sub-paragraph (a)

In Commission the question was raised as to whether it was clear from the present draft whether the sentence "which results in the sale .... domestic market" referred only to the "system" or also to "subsidy".
Insertion of Sub-paragraph.

The United States delegation proposed to insert the word "sub-paragraph" in sub-paragraph (a) at the beginning of the second part of the sentence.

Exceptions to paragraph 2 (c).

There was some discussion in Commission B as to the force of the exemptions mentioned in sub-paragraph 2 (c). The first part of this paragraph states what actions are prohibited and the second part gives three kinds of actions that are exempt from this prohibition:

1. exempting exported goods from duties or taxes imposed in respect of like products when consumed domestically,
2. remitting such duties or taxes which have accrued,
3. using the proceeds of such duties or taxes to make payments to domestic producers.

The question was raised in Commission B as to whether all of these actions permitted under paragraph 2 came under paragraph 1 which requires notification to the Organization and discussion with other Members.

It was suggested that the point should be clarified by the Sub-committee, and the Czechoslovak Delegation notified the Commission of its intention to submit a proposal to the Sub-committee.

The proposal, which has been circulated in Document W/201, is as follows:

1. Delete the second part of paragraph 2 (c) beginning with the words "Provided that...."
2. Add a new paragraph 3 reading as follows:
   "(3) The provisions of this Article shall not prevent any Member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically or from remitting such duties or taxes which have accrued. The use of the proceeds of such duties or taxes to make payments to domestic producers, however, would be considered as a case under paragraph (1)".
3. Renumber the following paragraph accordingly.

Sub-paragraph (b). Reduction of time limit:

The INDIAN Delegation proposed to substitute "one year" for "three years" in the first sentence of sub-paragraph (b).

There was considerable support for this suggestion it being pointed out that at the present time there was a world-
wide scarcity of goods and so export subsidies could be withdrawn without any hardship. Moreover, near the end of the period of three years prices may have fallen and it would be more difficult to remove subsidies. It was also pointed out that there was little danger in reducing the period from three years to one year because the sub-paragraph contained specific provision whereby countries finding it difficult to make the adjustment within the time stipulated could request an extension.

Some delegates pointed out that their attitude to this time limit would depend on the final form which paragraphs 3 and 4 took. It was, therefore, suggested that the Sub-Committee should consider this Indian proposal after it had dealt with paragraphs 3 and 4.

Suggested new sub-paragraph (c).

The United Kingdom delegation (W/182) proposed the addition of the following new sub-paragraph:

"The provisions of this paragraph shall not at any time preclude a Member interested in the export of any product, which considers that its interests are being prejudiced by a subsidy applied, directly or indirectly, in respect of the product by a non-Member which is a competing exporter, from subsidising its own exports to any destination to which the Member deems necessary to neutralise the injury to its interests and for so long as the non-Member's subsidy continues in effect, but no longer. Provided that any other Member considers that its interests are being adversely affected by the measure of counter-subsidisation applied by the first-mentioned Member, these Members shall consult together, and, if necessary with the Organisation, in order to reach a mutually satisfactory adjustment of the matter."

Many delegates supported this addition in this paragraph. In the discussion in the Commission it was suggested that the Sub-Committee might give consideration to the possibility of providing for prior consultation with other interested Members by the Member contemplating action under the provision. Others suggested that the Organisation should play a more positive role as it might be necessary for the Member countries to take common action against non-Members.
PARAGRAPH g.

The following amendment has been suggested by the Australian delegation (Document W/188/Rev.1)

"A system for the stabilization of the domestic price or of the return to domestic producers of a primary product which results over a period in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market shall be considered not to involve a subsidy on exportation under the terms of paragraph 2 of this Article, if it is determined that provision is made for the maintenance at fixed levels of prices for domestic consumption irrespective of the movement of export prices and because of such provision the system results, over a period, in the sale of the product for export at a price higher than the comparable price charged for the like product to domestic buyers and that the system is so operated, either because of the effective limitation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interest of other Members."

The points raised during the discussion in the Commission are set out in the order in which they occur in the text of the Australian amendment.

"the return to domestic producers"

Some delegates thought it necessary to provide for comparison between export prices and returns to domestic producers, while others considered it desirable to retain a link between external prices and domestic prices.

Proposed deletion of statement "which results over period... to buyers in the domestic market."

The grounds advanced for this deletion were that the words had been considered superfluous as there was already a reference to paragraph 2 where they were used, and it was proposed to state the objectives.

A number of delegates opposed the deletion of this statement. It was stated that it provided a useful basis for determination as to whether a stabilization scheme involved an export subsidy.

Substitution of "shall" for "may"

Some delegates supported the change which would prevent the Organization from determining, except for the specific reasons stipulated, that the stabilization scheme did not involve a subsidy. Others opposed the change.

Insertion of "or may result"

This change was introduced with the idea of allowing new stabilization schemes to commence even in times when world prices were low. On the other hand, it was pointed out that schemes established when world prices were low might not be adhered to when they were high.
Deletion of the word "also" before "resulted"

It was suggested that "also" should be maintained because it helped to show the contrast between the prices on the overseas and domestic markets.

Substitution of "or" for "and"

The Australian amendment (line 14) retained the word "and" from the New York text but it was suggested in Commission B that "or" might be more appropriate.

"... because of the effective limitation of production ..."

One delegate doubted whether this concept should be introduced.

"... not to stimulate exports unduly ..."

Some delegates suggested the deletion of these words. A number of others considered they should be retained.

"... otherwise seriously .... Members."

It was suggested in Commission that this phrase should be deleted.

PARAGRAPH 4.

SUB-PARAGRAPH (a):

1. The UNITED STATES Delegation proposed to make the following change at the end of sub-paragraph (a):

"... laid down therein the Member may have resort to the procedures of the difficulty may be determined to be a special difficulty of the kind referred to in/ Chapter VII (and in that event, the procedure laid down in that Chapter shall be followed).

Comment of the United States Delegation when submitting this amendment:

"The procedure of Chapter VII requires the determination by a study group or a commodity conference that there is a special difficulty."

Notes:

During the Commission meeting it was pointed out that the text of the New York draft really provides for the determination of whether special difficulties exist, firstly via paragraph 6 of this Article (or Article 66(4)), and secondly via the study group of Chapter VII. On the other hand, it was argued that the proposed amendment constituted a substantial change as it eliminated the preliminary "screening process" which was contained in paragraph 6. It was pointed out that the change proposed was merely a drafting change because the text of Article 49 made it quite clear that a conference could be called on the basis of information agreed to be adequate by Members having a substantial interest, whether or not a study group had been formally called under the terms of Article 48. Since a "determination" under procedure of paragraph 6 (Article 66(4)) involved consultation with "Members substantially interested" it would be possible to proceed directly to a conference without calling a study group under Article 48.
The different points of view expressed in the Commission as to interpretation seem to indicate some lack of clarity in the text. The Sub-Committee might therefore want to revise the text so as to make clear its implication.

**SUB-PARAGRAPH (b):**

Two delegations suggested the deletion of this sub-paragraph. It was decided by the Committee to retain it, but the Sub-Committee were asked to take note of the discussion in the Commission.

It was pointed out that clarification was needed as to whether the prohibition of export subsidies was to be relaxed when the agreement itself has failed or when the attempt to form an agreement has failed.

It was also urged that it should be made clear in the drafting that paragraph 4(b) was meant to provide for the extreme case where it was necessary to re-impose subsidies.

**Notes:**

The Sub-Committee might want to clarify this sub-paragraph in the light of the discussion. It was suggested that it might be possible to integrate this sub-paragraph with paragraph 5. In connection with this sub-paragraph the proposal submitted by the Netherlands delegation and contained in Document E/PC/T/7/207 might be examined. This document proposes a new Article 57A in which reference is made to Members entering into "consultation or negotiations about subsidization as referred to in Article 30 (4);". It is provided also that "these consultations or negotiations may include non-Members after invitation by the Organization upon the request of a Member or a group of Members."

**PARAGRAPH 6:**

The United States Delegation suggested the following changes:

"Any determination required by or appropriate to the operation of this Article shall be made through procedures established by the Organization by consultation among the Members substantially interested in the product concerned in accordance with paragraph 4 of Article 66."

Comment of the United States Delegation:

"The revised paragraph would incorporate the provisions of Article 66, paragraph 4, thus eliminating the cross reference."

**Notes:**

In connection with this suggestion the United States delegation has proposed at another place the deletion of
paragraph 4 of Article 66 and the incorporation of its substance within Articles 30 and 52.

The text suggested by the United States Delegation omits the reference to the duties of the Conference in this connection as stated in Article 66, paragraph 4, namely, "the Conference shall establish procedures...". If this reference is omitted it will need to be specified probably in Chapter VII who will exercise the functions of the "Organization".