

24 February 1955

DRAFT REPORT OF SUB-GROUP I-CI. Proposed Amendment to Article XI

1. The Sub-Group considered various proposals for improving the provisions governing the application of restrictions under Article XI, in particular the proposals by the Dominican Republic Delegation (W.9/128) and by the Danish Delegation (L/273). The Sub-Group considered that these proposals contained interesting suggestions but that it was not desirable, at this stage, to amend the provisions of Article XI or related provisions, since most of the points were already covered sufficiently by the existing provisions of the Agreement, on the other hand some of the specific suggestions considered risked to complicate unnecessarily the procedures provided for in Article XI while others would duplicate or deviate from the non-discriminatory provisions of Article XIII.

2. The Sub-Group considered, however, that it might be useful to insert in the Working Party's report brief agreed statements which would clarify some of the points that the proposed amendments intended to cover. It might be useful, for instance, to reaffirm that the maintenance of the application of a restriction which went beyond what would be "necessary" to achieve the object defined in paragraph 2(b) or 2(c) of Article XI would be inconsistent with the provisions of that Article. This is made clear in the text by the use of the word "necessary" in those provisions. Restrictions related to the application of standards or regulations for the classification, grading or marketing of commodities in international trade which would go beyond what will be necessary to the application of those standards or regulations, and would thus have an unduly restrictive effect on trade, would therefore be inconsistent with Article XI. Moreover, if import restrictions of the type referred to in paragraph 2(c) were to be applied after the governmental measures referred to in that paragraph have ceased to be in force, those restrictions would no longer be necessary for the enforcement of those measures and would therefore be inconsistent with the provisions of that paragraph.

3. It was also recognized that if restrictions of the type discussed in that paragraph applying to the import of products of which domestic supplies are available during only a part of the year those restrictions would not be considered as "necessary" for the enforcement of the governmental measures referred to in this paragraph if they were operated in such a way as to prevent the import of the products when domestic supplies are not available. Finally, it was recognized that it would be an abuse of intent of the provisions under paragraph 2(c)(i) of Article XI if the contracting parties were to apply restrictions to processed products exceeding those "necessary" to secure enforcement of the actual measure restricting production or marketing of the primary product.

4. As regards the additional procedural provisions suggested by the Danish and Dominican Republic delegations, the movers of those amendments agreed to withdraw their proposals on the understanding that the Working Party's report would contain the statements reproduced in paragraphs 5 and 6 below.

5. The requirement that any contracting party applying restrictions pursuant to paragraph 2(c) should give public notice of the quantities or values to be imported should be construed as requiring that contracting party to send a copy of that notice to the CONTRACTING PARTIES (or the Organization) who would circulate this information to all contracting parties concerned.

6. The Working Party recommends that, whenever practicable, a contracting party intending to introduce restrictions pursuant to paragraph 2(c) of Article XI should give advance notice, on a confidential basis, to interested contracting parties and to the CONTRACTING PARTIES¹ (or the Organization) so as to give them an opportunity for consultation.

7. Regarding the proposals made for consultations with the CONTRACTING PARTIES under Article XI, the Sub-Group was of the opinion that, if the proposed amendment to Article XII would enable any contracting party to request the CONTRACTING PARTIES (or the Organization) to require consultation with another contracting party regarding any matter relating to the administration of the Agreement, a special procedure with the [] of Article XI would serve little useful purpose. The proposals for amendments were withdrawn on the assumption that the new text of Article XXII would be approved by the CONTRACTING PARTIES.

8. Finally, the Sub-Group agreed that it would not be desirable to write into Article XI a procedure for dealing with cases of deviations from the provision of that Article as the remedy for such cases was already contained in the provisions of Articles XXII and XXIII of the Agreement.

II. TRANSITIONAL PROBLEMS CONNECTED WITH THE ELIMINATION OF BALANCE-OF-PAYMENTS RESTRICTIONS

9. The Sub-Group considered in detail the type of problems which some contracting parties may have when they eliminate the import restrictions they were applying for a number of years for balance-of-payments reasons. There was general agreement in the Sub-Group that it would be undesirable to deal with such problems which are essentially of a temporary nature by means of an amendment to the provisions of the Agreement, even in the form of transitional measures. The Sub-Group considered various suggestions in order to give at this session to the contracting parties concerned the necessary assurances that a reasonable solution for such problems would be found when the need for a special dispensation would arise. It came to the conclusion that the most appropriate solution would be for the CONTRACTING PARTIES to approve at this session a decision in accordance with XXV:5(a). That decision would provide for a temporary waiver of the obligations of

¹ The Belgian Member of the Sub-Group was unable to associate himself with this recommendation as it appeared to him that such advance notice would stimulate speculative trade and other forestalling operations which would defeat the purpose of the measure.

Article XI to the extent necessary to deal with that problem. The CONTRACTING PARTIES, however, would not, at this Session, finally concur in the actual deviations from Article XI which would be authorized at a future date, or on the specific terms and conditions of such concurrence. The Decision provides that the deviations would be authorized, subject to concurrence by the CONTRACTING PARTIES, and that such concurrence will have to be obtained when the contracting party concerned ceases to be in balance-of-payments difficulties. Moreover, the Decision contains a number of conditions and limitations which would govern the granting of such authorizations.

10. The Decision may be divided into four parts: the Preamble, which reaffirms the general rule contained in Article XI and defines the scope of the applicability of the Decision; the operative part, which includes the requirements that an application must fulfil to be considered under the procedure outlined in the Decision as well as the undertakings which the applicant contracting party is expected to accept. The main conditions for obtaining the dispensation are that the measures contemplated by the applicant contracting party are such as to give a reasonable prospect of a rapid elimination of the restriction, that the exporting countries would obtain a fair share of the market, and that the restriction would be applied in a non-discriminatory manner. The Decision also contains a detailed description of the procedures for the annual review by the CONTRACTING PARTIES of the measures maintained under the Decision.

11. Finally, the Decision specifies the rights of contracting parties under Article XXIII of the Agreement remain unaffected.

12. The Annex to this report contains the text of the draft Decision to be submitted to the CONTRACTING PARTIES, as well as a number of statements which it appeared desirable to insert in the Working Party's report in order to clarify some points in the Decision.