

DRAFT

Interim Commission for the
International Trade Organization

REPORT OF WORKING PARTY ON CHAPTER VI
Provisional Application of
Chapter VI of the
Havana Charter

As requested by the emergency session of the Executive Committee on 22nd July (ICITO 1/19), the Working Party has considered possible methods of giving effect to the provisions of Chapter VI pending the entry into force of the Charter which might be proposed as alternatives to the protocol of provisional application suggested by the United Kingdom Delegation. The Working Party presents an alternative method which it considers suitable, namely a decision to be taken by the CONTRACTING PARTIES under Article XXV of the General Agreement on Tariffs and Trade. A draft decision which might be recommended to the CONTRACTING PARTIES by the Executive Committee is annexed to this Report.

In presenting this draft decision, the Working Party wishes to draw the attention of the Executive Committee to the differences between the two methods which have now been proposed. The main points of difference are summarized in the following paragraphs. (For the sake of brevity, the protocol of provisional application proposed by the United Kingdom Delegation will be referred to as the "protocol", and the decision of the CONTRACTING PARTIES proposed by the Working Party will be referred to as "the decision").

(1) Obligations of participants

The protocol would bring all of Chapter VI into force provisionally among signatories. The decision would involve the obligations on the part of the participant to be guided by the general principles of Chapter VI. The extent of the difference might not be great in practice, since the provisions of Chapter VI are designed to carry out the general principles of the Chapter and the decision provides administrative machinery.

(a) The extent to which the Contracting Parties would be bound

The protocol would bind only Contracting Parties accepting it. The decision would bind all Contracting Parties. The Working Party considers however, that the decision would not bind Contracting Parties to any obligations additional to those to which they are already bound as Contracting Parties to the General Agreement. Moreover in the field in commodity problems the need for proceeding by majorities including practically all interested countries generally is recognized.

(b) The extent to which non-Contracting Parties would be bound

The protocol would bind non-Contracting Parties accepting it equally with Contracting Parties accepting it. The decision would bind non-Contracting Parties by virtue of their acceptance of the ECOSOC Resolution as the basis of their participation. They could not be bound by a majority vote of the participants.

(ii) Entry into force

The decision would be effective immediately. The protocol would pre-suppose signature by a nucleus of countries of importance in the commodity field; after they had signed the protocol there might be delay in obtaining the signatures of other countries. It is known that at least two contracting parties would probably not be able to submit the protocol to their parliaments for approval because the Havana Charter has already been submitted.

(iii) Relation to other obligations of the General Agreement

Under both the protocol and the decision the participating Contracting Parties would be committed to certain obligations in respect of the use of quantitative restrictions, subsidies etc., while the participating non-Contracting Parties would not be so committed.

(iv) Secretariat

The protocol would allow the I.C.C.I.C.A. to pass out of existence, which possibility was implied in its letter to the Secretary-General of the United Nations, and another international entity would be created. Under the decision, on the other hand, I.C.C.I.C.A. would probably continue and expand its activities pending the ratification of the International Trade Organization.

Procedural Questions

It is provided in the draft decision that the CONTRACTING PARTIES from time to time consider the matters referred to therein in accordance with a procedure to be established. The preparation and adoption of a detailed procedure is a task which must be left to the CONTRACTING PARTIES. But, in view of the

fact that the procedure to be adopted might in some particulars affect the consideration of this proposal by the Executive Committee, the Working Party wishes to mention the two main procedural questions involved:

1. The responsibility for convening meetings -

It is contemplated that meetings of the CONTRACTING PARTIES to consider the matters referred to in the decision would be convened by the Chairman of the CONTRACTING PARTIES after consultation with the Chairman of the I.C.C.I.C.A. Such meetings would be convened by the Chairman on the request of a Contracting Party or of I.C.C.I.C.A.; if a government which is not a Contracting Party or an inter-governmental organization should desire to request a meeting, this request would be addressed to I.C.C.I.C.A.;

2. Rights and obligations of non-Contracting Parties at such meetings -

It is suggested that a government which is not a Contracting Party, which is invited to participate in the consideration by the CONTRACTING PARTIES of matters referred to in the decision, should have the right to full participation including voting rights with the sole exception of voting on matters referred to in sub-paragraph (c) of the decision. It would be understood that a decision on any matter arising from sub-paragraph (c) would not be binding on governments which are not Contracting Parties.

ANNEX

DECISION TAKEN BY THE CONTRACTING PARTIES
AT THE THIRD SESSION, Annecy, 1949

DECISION OF AUGUST 1949 CONCERNING JOINT ACTION BY THE
CONTRACTING PARTIES ON INTERNATIONAL TRADE IN
PRIMARY COMMODITIES

WHEREAS special difficulties which may jeopardize the general policy of economic expansion are occurring or are likely to occur in the international trade in primary and related commodities, which difficulties are giving rise to international discussion of inter-governmental commodity agreements relating to these commodities, and

WHEREAS the solution of these difficulties on appropriate lines is essential to the objectives of the General Agreement on Tariffs and Trade as set out in the preamble thereto, and

WHEREAS the General Agreement provides in paragraph I (h) of Article XX that nothing in the Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures undertaken in pursuance of obligations under inter-governmental commodity agreements conforming to the principles approved by the Economic and Social Council of the United Nations in a Resolution of March 28, 1947, and now incorporated in Chapter VI of the Havana Charter, and

WHEREAS the Interim Co-ordinating Committee for International Commodity Arrangements established by the aforementioned Resolution of the Economic and Social Council in a letter addressed to the Secretary-General of the United Nations has expressed doubt whether at the present time an interim body not composed of representatives of governments can effectively exercise the functions assigned to the International Trade Organization in this matter by Chapter VI of the Havana Charter,

WHEREAS paragraph 1 of Article XXIX of the General Agreement provides that the Contracting Parties undertake to observe to the fullest extent of their executive authority the aforesaid principles pending their acceptance of the Havana Charter in accordance with their constitutional procedures, and

WHEREAS Article XXV of the General Agreement provides that representatives of the Contracting Parties shall meet from time to time for the purpose of giving effect to those provisions of the Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of the Agreement:

The CONTRACTING PARTIES decide -

- a) to consider from time to time as may be necessary in accordance with a procedure to be established, the matters referred to in this Decision;
- b) to invite other governments eligible for membership in the International Trade Organization which are to participate in such consideration on the basis of the principle of the Resolution of the ECOSOC referred to in this Decision;
- c) to review, having regard to paragraph 1 (h) of Article XX, existing commodity agreements, in which one or more contracting parties participate, to ascertain whether or not they conform to the principles referred to in Article XXIX of the General Agreement;
- d) to take or recommend such other action as may be appropriate in the light of the aforesaid principles, including the convening of commodity study groups and/or conferences; and
- e) to request the Interim Commission for the International Trade Organization to furnish such additional secretariat services as may be necessary for the carrying out of these functions.