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DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

LEGAL DRAFTING SUB-COMMITTEE

INTRODUCTION

This paper has been prepared to facilitate the work of the Legal Drafting Sub-Committee. As further chapters of the Charter are referred to the Sub-Committee, similar papers will be prepared.

This paper falls into three parts. Part I consists of the texts of articles which have been provisionally agreed after second reading in the Drafting Committee, Part II of drafting points raised either by the Secretariat or by Delegates, and Part III of reservations which have been made together, in some instances, with alternative texts suggested by Delegates. It will be one of the tasks of the Sub-Committee to decide and recommend what should be done with reservations and alternative texts. Where an alternative text has been submitted, there are several possible methods of treatment - the text may be included in the body of the redrafted Charter as an alternative suggestion of the Drafting Committee or as expressing the point of view of only one or more delegates or it may be placed in the notes and commentaries to the Report.

PART I

CHAPTER III

EMPLOYMENT, EFFECTIVE DEMAND AND ECONOMIC ACTIVITY

Article 3

Relation of Employment to the Purposes of the Organization

1. Members recognize that the avoidance of unemployment or under-employment through the achievement and maintenance in each country of useful employment
/opportunities

opportunities for those able and willing to work and of high and steadily rising effective demand for goods and services is not of domestic concern alone, but is a necessary condition for the expansion of international trade, for the well-being of other countries, and, in general for the realization of the purposes of this Charter. Measures to sustain demand and employment shall be consistent with the other purposes and provisions of this Charter, and in the choice of such measures each country shall seek to avoid creating balance of payments difficulties for other countries.

2. Members agree that, while the achievement and maintenance of employment and effective demand must depend primarily on domestic measures, such measures should be assisted by the regular exchange of information and views among members and, so far as possible, should be supplemented by international action sponsored by the Economic and Social Council of the United Nations and carried out in collaboration with the appropriate (inter-governmental organizations) inter-governmental agencies), acting within their respective spheres and consistently with the terms and purposes of their basic instruments.

Article 4

The Maintenance of Domestic Employment

Members shall take action designed to achieve and maintain full and productive employment and high and stable levels of effective demand within their own jurisdictions through measures appropriate to their political and economic institutions and compatible with the other purposes and provisions of this Charter.

Article 5

Fair Labour Standards

Members, recognizing that all countries have a common interest in the maintenance of fair labour standards, related to national productivity, agree to take whatever action may be appropriate and feasible to eliminate sub-standard conditions of labour in production for export and generally throughout their jurisdictions.

Article 6

Article 6

The Removal of Maladjustments in the Balance of Payments

In case of a fundamental disequilibrium in their balance of payments involving other countries in persistent balance-of-payments difficulties which handicap them in maintaining employment, Members shall make their full contribution to action designed to correct the maladjustment.

Article 7

Safeguards for Countries 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.

Article 8

Consultation and Exchange of Information on Matters Relating to Employment

Members shall participate in arrangements undertaken or sponsored by the Economic and Social Council of the United Nations, including arrangements (inter-governmental organizations) with appropriate (specialized inter-governmental agencies)

(a) for the regular collection, analysis and exchange of information on domestic employment problems, trends and policies, including as far as possible information relating to national income, demand and the balance of payments; and

(b) for consultation with a view to concerted action on the part of governments and inter-governmental organizations in the field of employment policies.

CHAPTER IV

ECONOMIC DEVELOPMENT

Article 9

Importance of Economic Development

Members recognize that the industrial and general economic development

/of all.

of all countries, and particularly of those in which resources are as yet relatively undeveloped, will improve opportunities for employment, enhance the productivity of labour, increase the demand for goods and services, contribute ultimately to economic stability, expand international trade, and raise levels of real income, thus strengthening the ties of international understanding and accord.

Article 10

The Development of Domestic Resources and Productivity

Seeing that all countries have a common interest in the productive use of the world's human and material resources, Members shall take action designed progressively to develop industrial and other economic resources and to raise standards of productivity within their jurisdictions through measures compatible with the other provisions of this Charter.

Article 11

Plans for Economic Development

1. Members shall co-operate through the Economic and Social Council of (inter-governmental organizations) the United Nations and the appropriate (specialized inter-governmental agencies) in promoting industrial and general economic development.
2. The Organization, upon the request of any Member, shall advise such Member concerning its plans for economic development and, within its competence and resources, shall provide such Member, on terms to be agreed, with technical assistance in completing its plans and carrying out its programmes.

Article 12

Means of Economic Development

1. Progressive economic development is dependent upon adequate supplies of capital funds, materials, equipment, advanced technology, trained workers and managerial skill. Accordingly, Members shall impose no unreasonable impediments that would prevent other Members from obtaining any such facilities for their economic development and shall co-operate, /within the

within the limits of their power, with the appropriate international organizations of which they are members in the provision of such facilities.

2. Members agree that, in their treatment of other Members and of business entities or persons within the jurisdictions of other Members which supply them with facilities for their industrial and general economic development, not only will they conform to the provisions of their relevant international obligations now in effect, or which they may undertake pursuant to paragraph (5) of Article 61 or otherwise, but also that in general they will take no unreasonable action injurious to the interests of such other Members, business entities or persons.

3. Any Member or, with the permission of a Member, any affected business entity or person within that Member's jurisdiction, may submit to the Organization a complaint that action by another Member is inconsistent with its obligations under this Article. The Organization may, at its discretion, request the Members concerned to enter into consultation with a view to reaching a mutually satisfactory settlement and may lend its good offices to this end.

CHAPTER IV

Article 13

Governmental Assistance to Economic Development

1. Members recognize that special governmental assistance may be required in order to promote the establishment or reconstruction of particular industries and that such assistance may take the form of protective measures.

2. Members recognize that an unwise use of such protection would impose undue burdens on their own economies and unwarranted restrictions on international trade and might increase unnecessarily the difficulties of adjustment for the economies of other countries.

/3. (a) If a

3. (a) If a Member, in the interest of its programme of economic development, considers it desirable to adopt any protective measure which would conflict with any other provision of this Charter, or with any obligations which the Member has assumed through negotiations with other Members pursuant to Chapter V, it shall so notify the Organization and shall transmit to the Organization a written statement of the considerations in support of the adoption of the proposed measure. The Organization shall promptly inform those Members whose trade would be substantially affected by the proposed measure and afford them an opportunity of presenting their views. The Organization shall then promptly examine the proposed measure in the light of the provisions of this Chapter, the considerations presented by the applicant Member, the views presented by the other Members which would be substantially affected by the proposed measure and such criteria as to productivity and other factors as it may establish, taking into account the stage of economic development or reconstruction of the Member.

(b) If, as a result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure which would be inconsistent with any obligation that the applicant Member has assumed through negotiations with any other Member pursuant to Chapter V or which would tend to nullify or impair the benefit to such other Member of any such obligation, the Organization shall sponsor and assist in negotiations between the applicant Member and the other Member or Members which are substantially affected, with a view to obtaining substantial agreement. Upon such agreement being reached the Organization may release the applicant Member from the obligation in question or from any other relevant obligation under the Charter, subject

/to such

to such limitations as the Organization may impose or as may have been agreed upon in the negotiations between the Members concerned.

(c) If, as the result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure, other than those provided for in sub-paragraph (b), which would be inconsistent with any other provision of this Charter, the Organization may, at its discretion, release the applicant Member from the obligation in question, subject to such limitations as the Organization may impose.

CHAPTER V

GENERAL COMMERCIAL POLICY

SECTION A - GENERAL COMMERCIAL PROVISIONS, MOST-FAVOURED-NATION TREATMENT, TARIFF AND TARIFF PREFERENCES, ETC.

Article 14

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports and with respect to the method of levying such duties and charges and with respect to all rules and formalities in connection with importation or exportation and with respect to all matters affected by the provisions relating to national treatment in Article 15, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries respectively.

/2. The provisions

2. The provisions of paragraph (1) shall not be construed to require the elimination of any preferences in respect of customs duties and other charges imposed on importation, which do not exceed the preferences remaining after the negotiations contemplated in Article 24 and which fall within the following descriptions:

- (a) Preferences in force exclusively
 - (i) between two or more territories in respect of which there existed on 1 July 1939 common sovereignty or relations of protection or suzerainty; or
 - (ii) between two or more of the territories comprised in Annexure A to this Charter.

Each Member to which provision (i) applies shall provide a list of such territories which shall be incorporated in an annexure to this Charter.

(b) Preferences in force exclusively between the United States of America and the Republic of Cuba.

(c) Preferences in force on 1 July 1946 exclusively between neighbouring countries.

PART II

DRAFTING SUGGESTIONS

1. It would seem advisable that the Sub Committee should decide forthwith whether it wishes to retain the practice adopted in the Charter of prefacing statements of principle by the phrase "Members recognize that". This question is bound up with the broad question of the general form of the Charter upon which some delegates may wish to present views.

/2. Article 3:

2. Article 3:

(a) It is suggested that the title of this article (which is that which appeared in the United States Draft Charter) may now be too narrow in view of the broadening amendments to the text approved at the First Session. Besides stating the direct relation of employment to the purposes of the Organization, this article now defines the main objectives of employment policy and points out the need for international action in this field.

(b) It is suggested that in the third line of paragraph 1, the article "a" be inserted between "of" and "high".

(c) It is suggested that in the last two sentences of paragraph 1, the word "country" be changed to "Member". The Charter may say all countries should do something, but it cannot say all countries (including non-Members) shall do something.

(d) It is suggested that the order of the words "demand" and "employment" in the last sentence of paragraph (1), be changed to "employment and demand." This is the order employed in other places in Articles 3 and 4.

(e) The Sub-Committee may wish to delete the opening words of paragraph (2): "Members agree that".

(f) The objection to the phrase "specialized inter-governmental agencies" in paragraph (2) and elsewhere is that in United Nations' circles, the term "specialized agency" has come to mean an agency which has been brought into relationship with the United Nations. Therefore if this term is used, a mistaken impression as to its meaning may arise wherever it is employed. The use of the alternative "inter-governmental organizations" obviates this difficulty. It

/will be

will be recalled that it was in connection with this phrase that the representative of the International Bank suggested that a definition clause might be inserted in the Charter. The Sub-Committee may wish to adopt this suggestion. There is such a clause in Chapter VII.

(g) The words "while the achievement and maintenance of employment and effective demand" in paragraph (2) do not appear to have much meaning in the absence of a specification of the degree of employment and effective demand. The insertion of some such words as "the highest possible degree of employment and effective demand" might better express the meaning.

3. Article 5:

(a) It may be advisable to expand the condensed phrase "related to national productivity" in some such way as "labour standards which are fair when considered in relation to national productivity."

(b) It is suggested that the word "particularly" be inserted before the phrase "in production for export", and the order of the concluding words reversed so that the article ends: "generally throughout their jurisdictions and particularly in production for export."

(c) It is suggested that the principal verb be changed from "agree to take" to "shall take."

4. Article 6:

It is proposed that the phrase "shall make their full contribution" be shortened to "shall contribute fully."

5. Article 11:

5. Article 11:

(a) It is suggested that the word "such" before Member in paragraph 2 be deleted and the article "the" substituted.

(b) It is suggested that "formulating" might be a more appropriate word than "completing" in the last line of the same paragraph.

6. Article 12:

(a) The Sub-Committee might consider whether the word "progressive" in paragraph 1 is not superfluous.

(b) In the same paragraph the word "international" should seemingly be "inter-governmental" as the reference is to organizations of governments.

(c) It is suggested that the words "to this end" be inserted in paragraph 1 between "and" and "shall co-operate."

(d) The Sub-Committee may wish to consider whether the words "or maintain" should not be inserted after "impose" in this paragraph. This may be a matter of substance outside the competence of the Sub-Committee.

(e) It is suggested that to avoid the use of the verb "agree", paragraph 2 be redrafted as follows:

"2. In their treatment of other Members and of business entities or persons within the jurisdiction of other Members which supply them with facilities for their industrial and general economic development, Members shall conform to or otherwise, and in general will take or persons."

(f) It is suggested that the phrase: "conform to the provisions of their relevant international obligations now in effect, or which they may undertake pursuant to paragraph 5 of Article 61 or otherwise", in paragraph 2 might better be expressed as follows: "carry out all relevant international obligations to which they are at present subject or which they may undertake pursuant to....or otherwise."

/(g) The Sub-Committee

(g) The Sub-Committee may wish to amend the second sentence of paragraph 3 to include the possibility of consultation between a Member and an affected business entity or person.

7. Article 13:

(a) It is suggested that paragraph 1 be rephrased as follows: "Members recognize that they may be required to extend special assistance to particular industries in order to promote their establishment or reconstruction and that....measures."

(b) It is also suggested that paragraph 2 be combined with paragraph 1 in the following fashion: "However an unwise use of these measures would impose undue burdens on their economies....other countries."

(c) It is pointed out that under paragraph 3 as it is at present drafted, there is nothing to prevent a Member which proposes to adopt a protective measure of the type in question from imposing that measure immediately after it informs the Organization or at any later date before the procedure set out in the paragraph has been completed. The Sub-Committee may wish to consider whether it should bring this flaw to the attention of the Drafting Committee.

(d) The word "are" in sub-paragraph (b) of paragraph 3 should be amended to "would be".

(e) It is suggested that the phrase "other than those provided for in sub-paragraph (b)" in sub-paragraph

(c) of paragraph 3 should be placed in brackets so as to avoid confusion.

/(f). It is also

(f) It is also suggested that in the interests of clarity the concluding words of the same sub-paragraph should be made to read "release the applicant Member from the obligation to observe that provision subject toimpose."

8. Article 14:

(a) It is suggested that paragraph 1 be rearranged as follows:

"1. With respect to

- (a) customs duties....imports;
- (b) the method....charges;
- (c) all rules....importation;
- (d) all matters....Article 15 any advantage
....respectively."

(b) It is suggested that the word "comprised" in sub-paragraph (a), (ii) of paragraph 2 be changed to "listed."

(c) It is suggested that sub-paragraph (b) of paragraph 2 be amended so as to read: "(b) Preferences in force exclusively between the Republics of the United States of America and Cuba."

(d) It appears that anti-dumping and countervailing duties which, subject to certain restrictions, are sanctioned under Article 17 are not compatible with Article 14 as drafted. It may be necessary to add after "kind" in the first line of paragraph 1 the following words: "other than anti-dumping and countervailing duties dealt with in Article 17."

PART III

RESERVATIONS AND ALTERNATIVE TEXTS

1. Article 13:

(c) The delegate of the Lebanon proposed the following sub-paragraph (d) be added to paragraph 3:

"3. (d) Members recognize that the development of industry in small nations is hampered by the lack of a sufficiently large market for manufactured goods. Consequently the Organization shall give the most favourable consideration to any proposal for preferential tariff arrangements presented to it by small Member nations belonging to one economic region, aiming at the development of industry in that region, with a view to releasing them from their obligations under Chapter V."

(b) The delegate of China reserved his position regarding the phrase "subject to such limitations....Members concerned" in sub-paragraph (b) of paragraph 3.

(c) The delegate of New Zealand maintained the reservation made by the New Zealand delegation at the First Session (see Section I, paragraph 3, page 8 of the Report) regarding paragraph 3 and suggested that wording similar to that contained in paragraph 5 of Article 12 of the Charter drafted at the First Session should be substituted for the wording used.

(d) The delegate of Cuba maintained the reservations made by the Cuban delegation at the First Session (see Section I, paragraphs 3 and 4, page 8 of the Report) regarding paragraph 3. He stated that his reservations were covered by the proposals of the delegate of India which were embodied in document E/PC/T/C.6/W.5.

/2. Article 14:

2. Article 14:

(a) The delegate of Australia maintained the interpretation of Article 14 which had been made by the Australian delegation at the First Session (see Section A, sub-paragraph (1) (d) (iv) page 9 of the Report).

(b) The delegates of China and Chile reserved their positions regarding paragraph 2.
