

DRAFT CHARTER

DELEGATION OF AUSTRALIA: PROPOSED AMENDMENTS

ARTICLE 20

1. In the examination of this article which took place in Australia after the Geneva Conference the question was raised in relation to paragraph 2 (a) as to whether the period over which a critical shortage might exist would be such that the word "temporarily" would be inappropriate. A shortage might easily extend for two, three or more years, in which case it could hardly be said that a restriction necessary to meet these circumstances would be imposed temporarily.

2. It is therefore proposed that this word "temporarily" be omitted.

3. It is assumed that the references to the term "critical" in the text of this sub-paragraph which were recorded in the minutes at the Preparatory Committee in Geneva (see Geneva document E/PC/T/A/PV.40(1)) will be preserved in the record of the proceedings of this conference.

4. In accordance with paragraph 2 above it is proposed that sub-paragraph 2 (a) of Article 20 should read as follows:

"2. The provisions of paragraph 2 of this Article shall not extend to the following:

(a) export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member country;"

ARTICLE 24 (2)

Paragraph 2

"In all cases in which the Organization is called upon to consider or deal with problems concerning monetary reserves, balance of payments or foreign exchange arrangements, the Organization shall consult fully with the International Monetary Fund. In such consultation, the Organization shall accept all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, and shall accept the determination of the Fund as

\* Words enclosed in square brackets represent proposed deletions from the Geneva Text, and words underlined represent proposed additions.

/to whether

to whether action by a Member in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that Member and the Organization. The Organization, in reaching its final decision in cases involving the criteria set forth in paragraph 2 (a) of Article 21 shall give special weight to the opinions [except the determination] of the International Monetary Fund as to what constitutes a serious decline in the Member's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases."

Comment.

The delegation of Australia accepts whole-heartedly the need for the closest possible co-operation between the International Trade Organization and the International Monetary Fund in matters that are of common concern to both bodies. It does not believe, however, that the way to achieve this co-operation is to make one body subservient to the other.

In suggesting the above amendment, the delegation of Australia draws attention to the following considerations:

- (i) It is impossible to separate the purely financial aspects of the criteria in Article 21 (2) (a), on which it might be reasonable to give the Monetary Fund the final say, from the wider economic and commercial aspects, which are the concern of the Organization at least as much as of the Fund.
- (ii) It is undesirable to separate the functions of decision from those of responsibility for action. The ITO will have responsibility for any action to be taken under paragraphs 4 (c) and 4 (d) of Article 21 and therefore should also retain the right of decision as to whether the criteria under paragraph 2 (a) have been met.
- (iii) The present wording does not make clear whether it is the Monetary Fund or the International Trade Organization which would "pay due regard to special factors" in relation to the three specific criteria of Article 21 (2) (a) on which the Organization is required to "accept" the determination of the Fund. If this clause is interpreted to mean that it is the Monetary Fund which "pays due regard to special factors" in relation to these criteria, the Organization is giving up not only its jurisdiction over the facts but also its right to use its discretion in deciding whether special circumstances exist which

exist which should modify its decision. In relation to these three criteria, it is difficult to see, for example, how the Organization could adequately carry out the provisions of paragraph 3 (a) of Article 21, requiring it to take "full account of the difficulties of post-war adjustment".

- (iv) Co-operation between the Organization and the Monetary Fund, which should be as close as possible in the field of balance of payments questions, will be impaired if the Organization is forced to carry out decisions with which it disagrees, but which are imposed upon it by the Monetary Fund.
- (v) Since it may be assumed that membership of the two bodies will be fairly similar, it is likely that differences of opinion between them will arise mainly through differences in voting power of individual countries in the two bodies. It is particularly undesirable that a system of weighted voting, which may be appropriate in the case of the Monetary Fund, should be used to force decisions upon the Organization.
- (vi) If the Monetary Fund is to be given final decision on financial questions arising in connection with the Charter, it would be equally reasonable to provide that the Organization should have final decision as to commercial or trade questions arising in connection with the Articles of Agreement of the Monetary Fund.

#### ARTICLE 94

1. It appears to the delegation of Australia that, in view of the importance of paragraph (b) (ii) of Article 94 the intention of the Preparatory Committee in this regard should be made perfectly clear.
2. Doubts are felt as to whether the words "for the purpose of supplying a military establishment" are sufficiently explicit without interpretative comment. These words, it is considered, are capable of being interpreted as applying merely to a military establishment maintained or controlled by a Member country imposing a restriction on exports. It may however, be necessary to consider whether a particular product or products are intended for use by a military establishment maintained or controlled by another country. For example, before the last war Australia found it necessary to prohibit the export of iron ore to a particular foreign country for the reason that it was being used for military purposes and that the Australian product might be used in military action against Australia. Events proved that this action was fully justified. It is therefore suggested that this Conference should approve the interpretation of 94 (b) (ii) that the words  
/"a military establishment"

"a military establishment" include such establishments maintained by any other country as well as those maintained by the member itself and that this interpretation should be included in the records of the conference.

3. Again, in the course of the Geneva Conference the delegation of Australia questioned whether the wording of Article 94 (b) (11) could be interpreted as applying to any goods and materials and in particular raw materials used for the production of goods for military purposes. It was agreed that this was the intention of the provision and the inclusion of the words "directly or indirectly" was accepted by the Conference. This amendment partly met the Australian delegation's viewpoint, but a reservation was maintained on this sub-paragraph pending further consideration. It is now suggested that this Conference should endorse the interpretation approved at Geneva, that this sub-paragraph covers raw materials such as iron ore (the example mentioned above) or any other goods or materials used directly or indirectly for military purposes and that this endorsement should be included in the records.

4. If the suggestions embodied in paragraphs 2 and 3 above are approved and suitably recorded the delegation of Australia will be in a position to withdraw its reservation to Article 94 (b) (11).

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