

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

ANNOTATED AGENDA

PREPARED BY THE SECRETARIAT FOR THE DISCUSSION OF
CHAPTER IV OF THE DRAFT CHARTER.

Incorporating proposals put forward by Delegations as noted in the commentary on the Report of the Drafting Committee and as reported to the Secretariat by Delegations by Friday, 23rd May. (See E/PC/T/DEL/24 and 31; E/PC/T/71 and 71/Add.1; E/PC/T/72 and 72/Add.1; also the earlier unrevised edition of this paper relating to Chapter IV as well as to Chapter III, erroneously designated as E/PC/T/70 instead of E/PC/T/W.87).

CHAPTER IV.

ECONOMIC DEVELOPMENT.

The Delegation of the United States proposes that the title of the Chapter be redrafted to read as follows (E/PC/T/W.123):

"Economic Development and International Investment". *

In connection with Chapter IV, as well as Article 38 (1) in Chapter V, Chapter VII and possibly Chapter VI, the Delegation of the United Kingdom has suggested a general discussion in respect of the meaning of the words "country" and "Member" for the purposes of these Chapters. (E/PC/T/W.110).

Article 9 - Importance of Economic Development in Relation to
the Purposes of this Charter.

The Delegation of the United States proposes the revision of the title of this Article as follows (E/PC/T/W.123):

"Importance of Economic Development and International
Investment in Relation to the Purposes of this
Charter."

* Where possible underlining has been used to indicate proposed additions and square brackets to indicate proposed deletions.

The Delegation of Czechoslovakia intends to submit observations or amendments relating to this Article.

The Delegation of the United States proposes the following revision of this Article (E/PC/T/W/123):

"The members recognize that the industrial and general economic development of all countries, and particularly of those countries or dependent territories in which resources are as yet relatively undeveloped, will improve opportunities for employment, enhance the productivity of labour, increase the demands for goods and services, contribute ultimately to economic stability expand international trade and raise levels of real income standards of living. thus strengthening the ties of International understanding and accord They also recognize the importance of private and public International capital movements, into productive investments, in promoting and facilitating such development."

Article 10 - Development of Domestic Resources and Productivity

Article 11 - Plans for Economic Development

Paragraph 1

The Delegation of the United States proposes the revision of this paragraph as follows (E/PC/T/W.123):

"1. Members shall co-operate with one another, and with the Economic and Social Council of the United Nations and with appropriate inter-governmental organizations in promoting industrial and general economic development."

Paragraph 2

It was decided by the Drafting Committee that the first sentence of this paragraph, the text of which is reproduced here below, should remain between square brackets pending consideration of the question by the Economic and Social Council at its Fourth Session. The Economic and Social Council has since considered the matter and its resolution adopted on 28 March 1947 has been circulated under E/PC/T/55

"2. The Organization, upon the request of any Member, shall advise such Member concerning its plans for economic development and shall, within the competence and resources of the Organization and on terms to be agreed, provide such Member with technical assistance in completing its plans and carrying out its programmes or arrange for the provision of such assistance. The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to members and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of Member countries."

The delegation of Cuba proposes the following changes in this paragraph (E/PC/T/W/116):

"The Organization, upon the request of any Member, shall advise such Member concerning its plans for economic development and shall, within the competence and resources of the Organization and on terms to be agreed, provide such Member with technical assistance in completing its plans and carrying out its programmes or arrange for the provision of such assistance especially as for the ways and means of financing special plans. The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of Member countries."

The Delegation of Czechoslovakia has proposed the following revision of this paragraph (E/PC/T/W.109):

"2. The Organization, upon the request of any Member, shall advise such Member concerning its plans for economic development and shall, within the competence and resources of the Organization and on terms to be agreed, provide such Member with technical assistance in completing its plans and carrying out its programmes or arrange for the provision of such assistance. The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members that Member and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of Member countries."

The Delegation of the United States proposes the revision of this paragraph as follows (E/PC/T/W.123):

"2. The Organization, upon the request of any Member, shall may advise such Member concerning its the latter's plans for economic development, and shall within the competence powers and resources of the Organization and on terms to be agreed upon, provide such Member with technical assistance may advise the Member in completing concerning its plans and the carrying out of its programmes, or arrange for the provision of such assistance and assist in the procurement of appropriate engineering and other technical assistance. The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members and appropriate intergovernmental organizations relating to the encouragement of the industrial and general economic development of Member countries."

The Secretariat suggests that the second part of this paragraph be amended as follows:

"The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members, the Economic and Social Council, and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of Member countries."

Article 12 - Means of Economic Development

The Delegation of the United States proposes that the title of this Article be revised to read as follows (E/PC/T/W.123):

"Means of Economic Development and their Promotion."

Paragraph 1.

The Delegation of Cuba proposes the revision of this paragraph as follows (E/PC/T/W.116):

"Progressive economic development is dependent upon adequate supplies of capital funds, materials, equipment, advanced technology, trained workers and managerial skill. Accordingly, the Members shall impose no /unreasonable/ impediments /that/ which are not necessary for their own economic or employment needs but would prevent other Members from obtaining any such facilities for their economic development and shall co-operate in accordance with Article 11, within the limits of their power, in providing or arranging for the provision of such facilities."

The Delegation for the UNITED STATES proposes the revision of this paragraph as follows (E/PC/T/W.123):

"Progressive economic development is dependent, among other things, upon adequate supplies of capital funds, materials, equipment, /advanced/ technology, trained /workers/ personnel, and managerial skill. Accordingly, the Members shall impose no unreasonable impediments that would prevent other Members from obtaining any such facilities for their economic development on equitable terms, and shall cooperate in accordance with Article 11, within the limits of their power, in providing or arranging for the provision of such facilities."

Paragraph 2.

The Delegation for Cuba has proposed the following changes in this paragraph (E/PC/T/W.116):

"Each Member, in its treatment of other Members and of business entities or persons within the jurisdiction of other Members which supply it with facilities for its industrial and general economic development, shall not only carry out all relevant international obligations to which it may be subject or which it may undertake pursuant to sub-paragraph (c) of Article 61 or otherwise but also shall in general take no /unreasonable/ action which is not necessary for its own economic or employment needs, but injurious to the interest of such other Members, business entities or persons."

The Delegation of INDIA proposes that the following text be substituted for the present paragraph 2 (E/PC/T/W.87):

"Each Member which receives facilities for its industrial and general economic development shall not only carry out all international obligations regarding the treatment of the enterprises, skills, capital, arts and technology imported from other countries to which it may be subject or which it may undertake pursuant to sub-paragraph (c) of Article 61 or otherwise, but also shall in general take no unreasonable action injurious to the interest of the particular business entities or persons within the jurisdiction of other Members which supply it with such facilities."

The Delegation of the UNITED STATES proposes the substitution of the following text for this paragraph (E/PC/T/W.123):

2. "In order to stimulate and assure the provision and exchange of facilities for industrial and general economic development, each Member shall take no unreasonable action injurious to the rights and interests of citizens or legal entities of any other Member country, in the enterprise, skills, capital, arts and technology which they have supplied.

Each Member shall accord to citizens and legal entities of other Members treatment no less favorable than it accords to its own citizens and legal entities with respect to opportunities for making investments and the treatment of existing and future investments; provided, however, that exceptions to such national treatment may be instituted or maintained if essential national interest so requires and if such exceptions are described in a statement filed with the Organization and published. In any event, each Member shall accord the citizens and legal entities of each other Member treatment no less favorable than that accorded to the citizens or legal entities of any third country.

Each Member shall accord adequate, effective and prompt compensation to the citizens and legal entities of any other Member who may have an interest in any property which may be taken into public ownership or placed under public management or occupation."

The Delegation of the UNITED STATES proposes the addition of the following paragraph (E/PC/T/W.123):

- 2 A. "Any Member may file a statement with the Organization, in addition to statements filed and published under sub-paragraph (c), paragraph 2, of this Article, setting forth any requirements, conditions or restrictions applicable to the opportunities for making investment and the treatment of existing and future investments made by the citizens and legal entities of other Member countries. Such statement may be amended from time to time by the filing and publication of an amended statement. No Member shall impose any requirements, conditions or restrictions on any investment of any citizen or legal entity of any other Member country which are inconsistent with any statement which was on file with the Organization at the time the investment was made."

Paragraph 3.

The Delegation of CZECHOSLOVAKIA (E/PC/T/W.107) and that of NEW ZEALAND (E/PC/T/W.96) propose the following revision of this paragraph:

"3. Any Member [, or with the authorisation 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, without prejudice to the application of Article 35, 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."

The Delegation for CUBA proposes the deletion of this paragraph (E/PC/T/W.116):

The Delegations of FRANCE and the UNITED KINGDOM have suggested the following alternative text for this paragraph (D.C. Report, page 9 and E/PC/T/W.59):

"3. Any Member may, on its own behalf or on behalf of or with the authorization 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, without prejudice to the application of Article 35, 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."

The Delegation of SOUTH AFRICA proposes amending this paragraph as follows (E/PC/T/W.102):

"3. Any Member, or with the authorisation 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 without prejudice to the application of Article 35, 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."

Additional paragraph.

The Delegation of the UNITED STATES suggests the addition of the following paragraph immediately following paragraph 3 (E/PC/T/W.123):

"4. The Organization is authorized to make recommendations for and promote international agreement on measures designed to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another, including the elaboration and adoption of a general international code on investment principles."

Article 13 - Governmental Assistance to Economic Development

Paragraph 1

The Delegation of Chile proposes the revision of this paragraph as follows (E/FC/T/W.124):

"The 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 or others. At the same time they recognize that an unwise use of such measures would impose undue burdens on their own economies, unwarranted restrictions on international trade and might increase unnecessarily the difficulties of adjustment for the economies of other countries."

The Delegation of India proposes that this paragraph be revised as follows (E/FC/T/W.87):

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

Paragraph 2

The Delegation of Chile proposes that the following text be substituted for paragraph 2 (E/FC/T/W.124):

"2. If a Member, in the interest of its programme of economic development, adopt any protective or other measures, of whatsoever kind, which conflicts or may conflict with any other provision of this Charter, or with any other obligation which the Member has assumed pursuant to Chapter V, and if such measure affects the trade of another Member, the latter may apply to the Organization, which shall examine the various aspects of the question and, should it prove that the interests of third parties are in fact substantially affected, shall invite Governments which have adopted the agreements to negotiate and conclude an arrangement with the said third parties. Should such an arrangement not be concluded, the Organization shall examine the question afresh and, subject to such limitations as it considers necessary, may release from the above-mentioned obligations any Member that has adopted such measures.

Sub-paragraph (a)

The Delegation of China proposes the following changes in this sub-paragraph (E/FC/T/W.82):

"If a Member, in the interest of its programme of economic development ~~adopts~~ considers it desirable to adopt any protective measure which would conflict with any other provision of this Charter, or with any obligation which the Member has assumed through negotiations with any other Member or 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 and other relevant provisions of this Charter, 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 applicant Member."

The Delegation of Czechoslovakia proposes the amendment of this sub-paragraph as follows (E/PC/T/W.108):

"If a Member in the interest of its programme of economic development or reconstruction considers it desirable to adopt any protective measure which would conflict with any other provision of this Charter, or with any obligation which the Member has assumed through negotiations with any other Member or 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 and other relevant provisions of this Charter, 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 applicant Member."

The Delegation of New Zealand has reserved its position concerning this paragraph (D.C. Report, page 9, comments on paragraph 2(a) under (i)).

The Delegation of the United Kingdom proposes the following revision of this paragraph (E/PC/T/W.110):

"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 obligation which the Member has assumed through negotiations with any other Member or 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/ as soon as possible and in any event within fifteen days inform those Members whose trade would be substantially affected by the proposed measure, and afford them an opportunity of presenting their views. Such views shall be presented as soon as possible and in any event within two calendar months of the receipt of the Organization's communication. The Organization shall then /promptly/ as soon as possible and in any event within one calendar month of the receipt of such views proceed to examine the proposed measure in the light of the provisions of this Chapter and other relevant provisions of this Charter, 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 applicant Member."

The Delegation of New Zealand proposes the substitution of the two following paragraphs for the present paragraph 2 (E/PC/T/W.114):

"2. Members undertake to employ in the interests of their programme of development only those measures which are consistent with the purposes, and as far as practicable, the provisions of this Charter.

"3. Any member who considers his interests adversely affected by the measures employed by another may complain to the Organization whereupon the procedure prescribed in Article 35 shall apply."

The Delegation for Lebanon has proposed the following additional sub-paragraph (D.C. Report, page 9, comments on paragraph 2(a) under (iii)):

"(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."

Sub-paragraph (b)

The Delegation for China has reserved its position regarding the bracketed part of the following paragraph (D.C. Report, page 9, comments on paragraph 2(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 or Members pursuant to Chapter V or which would tend to nullify or impair the benefit to such other Member or Members of any such obligation, the Organization shall sponsor and assist in negotiations between the applicant Member and the other Member or Members which would be 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 this Charter, [subject to such limitations as may have been agreed upon in the negotiations between the Members concerned] or such further limitations as the Organization may impose."

Sub-paragraph (c)

The Delegation of Cuba reserved its position concerning this paragraph at the Drafting Committee (D.C. Report, page 9, comments on paragraph 2(a) under (ii)), and has now indicated that it may suggest a reformulation of the whole Article or the transfer of corresponding provisions to an Article to be inserted after Article 26.

Additional texts

The additional text to Article 13 on page 8 of the D.C. Report was proposed by the Delegate for India and supported by the Delegates for China, Cuba and New Zealand.

The Delegation of India has advised the Secretariat that it is withdrawing the previously proposed additional text to this Article in favour of a new Article that that Delegation has proposed to be inserted after Article 26 relating to quantitative restrictions for protective purposes (E/PC/T/W.64).

The Delegation of Netherlands suggests that the following sub-paragraph (d) and new paragraph 3 be added to this paragraph (E/PC/T/W.121):

"(d) It is understood that among the limitations to be imposed by the Organization under sub-paragraphs (b) and (c), will be a specific period of time during which the measure in question is admitted. Such period of time can be extended by the Organization.

Paragraph 3 (new):

If a Member, in the interest of its programme of economic development, considers it desirable to adopt a quantitative restriction, it shall transmit to the Organization as far in advance of the initiation of the restriction as may be practicable a written statement of the considerations in support of the adoption of the restriction. The Organization thereupon will, after consultation with the applicant member and any other members concerned, determine a time limit prior to which the restriction should be revoked. Such time limit can be extended by the Organization."

The Delegation of the United Kingdom proposes the addition of the following two sub-paragraphs (E/PC/T/W.110):

"(d) If a Member considers that there has been unreasonable delay in the procedure provided for by this paragraph, it may at any time after five calendar months have elapsed from the date of the notification referred to in sub-paragraph (a) of this paragraph and pending its release by the Organization from the conflicting obligation, provisionally adopt a measure falling under sub-paragraph (c) of this paragraph which it has notified the Organization that it wishes to adopt; provided that the measure shall be withdrawn if the Organization, after full consideration, decides that it is unable to release the Member from its conflicting obligation.

"(e) If any Member is applying any protective measure of the kind referred to in sub-paragraph (a) of this paragraph at the date of entry into force of the Charter, the Member, if it desires to continue such measure, shall within two calendar months of that date transmit to the Organization a statement as provided in that sub-paragraph. The Organization shall examine the measure in the light of the matters referred to in the last sentence of that sub-paragraph and the Member may continue the measure pending a determination by the Organization."
