

FIFTH COMMITTEE: INTER-GOVERNMENTAL COMMODITY AGREEMENTS

SUB-COMMITTEE 'A'

NOTE ON USE OF THE TERM "SUBSTANTIAL INTEREST" IN CHAPTER VI

This paper is prepared by the Secretariat to assist the members of the Sub-Committee in their consideration of the uniform use of the term "substantial interest" in Chapter VI. This matter was referred to the Sub-Committee in the Sixth Meeting of the Fifth Committee (see document C.5/SR.6). There are set out below the instances in the Chapter where the term "substantial interest" is used.

1. Study Groups

Article 55, paragraph 1

"Any member which is substantially interested.....shall be entitled to ask that a study of the commodity be made."

Article 55, paragraph 2

".....the Organization shall.....invite each Member to appoint representatives to a study group.....if the Member considers that it is substantially interested....."

Note: In the first of these instances (Article 55, paragraph 1) the term is used objectively, i.e. there must be an evaluation showing that the interest of a member is enough to justify its asking that a study be made, whereas in paragraph 2 of Article 55 the use of the term is of a subjective nature, i.e. the member decides whether its interest is substantial enough to warrant sending a representative to a study group.

2. Commodity Conferences

Article 56, paragraph 1

".....or at the request of Members whose interest represents a substantial part..... The Organization may also ..... call such a conference on the basis of information agreed to be adequate by the Members substantially interested....."

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Note: In this paragraph the use of "substantial" is objective in both instances. In the first instance the Organization would have to decide objectively if the interest of members requesting a conference did in fact represent a "substantial" part of the world production, consumption or trade in the commodity. In the second instance, the Organization would first have to decide objectively which Members were substantially interested, and then consult and obtain their agreement regarding the adequacy of the information on the basis of which it wished to call a conference on its own initiative. (Whether or not such agreement must be unanimous is not clear).

Article 6, paragraph 2

"Each Member which considers that it is substantially interested....  
....shall be invited....."

Note: In the context of this paragraph "substantially interested" is subjective, i.e. each Member which "considers itself" substantially interested. It may be noted, however, that the present text might be read to limit invitations to Members who have already decided that they are "substantially interested".

3. Summing up on Study Group and Conference procedure

It will be seen that in both study groups and commodity conferences

- X (a) the right to request meetings is based on the Organization's objective decision on "substantial interest", and  
(b) the right to attend is based on the Member's subjective view on its "substantial interest".

4. The Principle of Adequate Participation in Agreements by Importers and Exporters:

Article 57, paragraph 1, sub-paragraph (d)

".....such agreements shall include provision for adequate participation of countries substantially interested in its exportation and production."

Note: The use of the term "substantially interested" in this paragraph would seem to be objective. It will be up to Members, in concluding an agreement, to decide objectively which countries are substantially interested in importation or consumption and in exportation or production and then ensure that there is provision for adequate participation  
/by both

by both groups. In examining a particular agreement, however, the Organization might wish to make an objective decision whether a particular agreement conformed with the Charter in these respects.

5. The Exception to the Commodity Conference Procedure for Control Agreements:

Article 58, paragraph 6

".....Members substantially interested.....may proceed by direct negotiation....."

Note: "Substantially interested" in this case would appear to be primarily subjective because where certain Members decided that they should proceed with direct negotiations, this would imply that they regarded themselves as "substantially interested". However on appeal, in regard to an agreement so concluded, the Organization might have to make an objective decision on the point.

6. Determinations regarding the Circumstances governing the use of Commodity Control Agreements:

Article 59, paragraph 2

"Determinations.....shall be made through the Organization by .. consultation and agreement among Members substantially interested....."

Note: Under this paragraph the Organization would be called upon to decide objectively on "substantial interest" before deciding which Members were entitled to engage in such consultation. In this connection the Sub-Committee may wish to consider the Committee's discussion of the proposal by the delegate of Ceylon to delete paragraph 2 of Article 59 (document C.5/SR.6). If the Sub-Committee decides that these determinations should be made within the conference, the present text presents one complication in that the membership of a conference is based on a subjective interpretation of "substantial interest" in accordance with Article 56, paragraph 2 and not on the objective interpretation implied in Article 59, paragraph 2.

7. Other References:

Article 59, paragraph 1. sub-paragraph (a)

"..... among whom are small producers who account for a substantial portion....."

/Article 59

Article 59, paragraph 1, sub-paragraph (b)

"... because ... a substantial reduction in price does not readily lead to a significant increase in consumption...."

Note: The use of "substantial" in these sub-paragraphs does not seem to be related to the other references in Chapter VI. It may nevertheless be thought desirable to substitute another term, e.g. "appreciable", in order to avoid any confusion.

8. General Note

There would seem to be various possibilities:

(a) to use the term "substantially interested" subjectively throughout the Chapter; or

(b) to use the term objectively throughout. (This would involve a wider basis for definition than at present implied in Article 56 (1).

For example, factors which might be taken into account, besides a country's proportionate share of world production, consumption or trade in a commodity, are (i) its production or consumption of the commodity expressed as a proportion of its national income, (ii) its trade in the commodity expressed as a proportion of its total trade); or

(c) to confine the use of the term "substantially interested" to where its intention is objective - this might still involve a wider basis for definition, as suggested in (b) above - and to use the term "vitaly interested" where the intention is subjective.

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