
SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.REPORT OF SUB-COMMITTEE ON CHAPTER IV.INTRODUCTION

The Sub-Committee on Chapter IV, established by Commission A on 27 May 1947, consisted of representatives of the Delegations of Australia, Brazil, Chile, France, India, the United Kingdom and the United States of America. Dr. H.C. COOMBS, (Australia), was elected Chairman.

Representatives of several Delegations not members of the Sub-Committee attended its meetings and participated regularly in its deliberations on points of particular interest to them, especially Canada, China, Cuba, Czechoslovakia, Lebanon, the Netherlands and New Zealand. Representatives of the International Bank and International Monetary Fund also participated.

GENERAL NOTES

The texts of Articles 9, 10, 11, 12, 12A, 13, 13A and 13B, annexed hereto, are recommended to the Preparatory Committee. The Cuban Delegation reserved its position regarding Article 12 and 12A, but has indicated it will withdraw this reservation if paragraph 3 of Article 89 is appropriately amended. The Delegation of Australia reserved its position regarding Article 12A. Article 13B was agreed with the exception of the voting requirement by which the Organization may grant an exception to the provisions of Chapter V to permit new preferential arrangements in the interests of programmes of economic development. (See note under Article 13B).

The Sub-Committee also considered certain amendments and reservations relating to matters dealt with in Articles 15,

25, 30 and 38, referred to it in the light of Commission A's ruling that the further study of matters relating to economic development should be concentrated in the Sub-Committee on Chapter IV. The amendments not withdrawn are listed in Annex II.

One group of these amendments would have the effect of permitting the use of quantitative restrictions for protective purposes either for agriculture or manufacturing industries without the prior approval of the Organization, but subject to complaint by an affected Member. While a clear majority of the Committee opposed these amendments and similar ones and felt unable to recommend them to the Commission, two members of the Sub-Committee supported by a number of non-members felt that a provision along these lines should be included in the Charter. These Delegations, which included Chile and India (members of the Sub-Committee) and China, Cuba and New Zealand (non-members of the Sub-Committee) reserved their position with respect to the Committee's recommendation on these amendments. The Chinese Delegation specifically reserved its position on Articles 13 and 13A on the ground that it preferred to revert to its original proposal to amend Article 25. The Lebanese Delegation similarly reserved its position.

The Sub-Committee also took into consideration reservations to the paragraphs of Article 15 concerned with internal quantitative restrictions. These reservations were made pending the settlement of the outstanding issues in Chapter IV, but the Sub-Committee felt unable to recommend to the Commission amendments on which they were based. The Chinese Delegate maintained his reservation to paragraph 3 of Article 15 and the New Zealand Delegate to paragraph 4 of Article 15.

The Cuban Delegation specifically reserved its position with respect to Articles 15, 25 and 30, in view of the Sub-Committee's recommendation with respect to the amendments to Chapter V which had been referred to it.

SPECIFIC NOTES

The following comments relate to those Articles or paragraphs which incorporate substantive changes from the New York text or to which reservations have been made or with respect to which explanatory notes were thought to be required.

ARTICLE 12

Paragraph 2

The intention of the Sub-Committee is that the word "nationals", wherever it occurs in this Article and Article 12A, should denote both real and juridical persons. Accordingly the words "real or juridical" have been introduced after the word "nationals" where it first occurs in each of these Articles. The Sub-Committee suggests that the Legal Drafting Committee should be asked to consider whether this method is the best one to secure the desired result, or whether there is occasion to introduce in some other appropriate place in the Draft Charter a definition in this sense which would apply to the word "nationals" wherever it occurs in the Charter.

Paragraph 3

The Cuban Delegation proposed an amendment to this paragraph in respect of possible unilateral use of sanctions which the Sub-Committee considered might more appropriately be included in the miscellaneous provisions of the Charter. A Working Group consisting of several members of the Sub-Committee on Chapter IV and Chapter VIII considered the Cuban amendment in relation to Article 89 (General Provisions regarding

Settlement of Differences as set out in document E/PC/T/W.139). The Sub-Committee on Chapter IV, having reviewed the Report of the Working Party, recommends to Commission A for adoption the following text:

"3. The Members undertake that they will not have recourse to any procedure other than those envisaged in the Charter for the settlement of complaints and difficulties arising out of its operation, nor, without prejudice to any other international agreement or convention, to unilateral sanctions of any kind on the ground that there has been a violation of an obligation accepted under the Charter, in advance of a complaint to the Organization and a final decision of the Organization establishing such violation."

The Cuban Delegation has reserved its position on this text.

Paragraph 4

The relevant parts of Article 61 (c) of the Drafting Committee Report (New York), authorizing the Organization to promote an international agreement on measures designed to assure just and equitable terms for the various means of promoting economic development, have been transferred to this paragraph, to which has been added a reference to a general agreement or statement of principles as to the conduct, practices and treatment of foreign investment.

ARTICLE 12A

1. This Article has been added to the New York text in order to emphasize the importance of international capital investment as a means of promoting economic development and consequent social progress and to provide certain rules for the treatment of investments once they have been made. It would

be understood that these provisions would not prejudice any more comprehensive rights or obligations of Members not inconsistent with the Charter.

2. The Sub-Committee believes that the word "just" in paragraphs 2 (a) (iv) and 2 (b) covers all aspects of the payment of consideration or compensation, including adequacy and time of payment, from the point of view both of the payer and of the receiver, and makes it clear that compensation would not be payable where property has been forfeited or taken under public management or occupation as a penalty for a violation of pre-existing law whether such penalty were imposed as a result of executive action, in accordance with the law or under judicial procedure. The Cuban Delegation's acceptance of these paragraphs is dependent upon a note to this effect being included in the official explanation of the text.^x

3. It was agreed that a Member's obligation to ensure the payment of just consideration or just compensation to a foreign national (insofar as it is an obligation to make payment in currency) is essentially an obligation to make payment in the local currency of that Member. The extent to which transfers of such payment into other currencies are to be allowed is for determination by the Member government in accordance with its general foreign exchange policy maintained consistently with the Articles of Agreement of the International Monetary Fund or with a special exchange agreement executed by that Member pursuant to Article 29 of the Charter, but subject to any other international obligations of that Member which are not inconsistent with its obligations under the Charter. A Member

^x One or more of the Delegates in the Sub-Committee believed it essential that the substance of this note, with which the Sub-Committee agrees, be included in the official explanation of the text.

would not, however, be fulfilling its obligation to ensure the payment of just consideration or just compensation if it restricted the transferability of such payments to a greater extent than required by its general foreign exchange policy as conditioned by the preceding sentence. In this connection, attention is invited to paragraph I of Article 19 of the Articles of Agreement of the International Monetary Fund.*

4. The Indian Delegate agreed to recommend Article 12A to his Government, without accepting it as a commitment on the part of his Government, pending further study.

5. The Australian Delegation reserved its position on Article 12A on the grounds that it considered it doubtful whether it was necessary to make additions along these lines to the subject matter of the Charter.

6. The Czechoslovak Delegation reserved its position on Article 12A with respect to ex-enemy countries' investments made in Czechoslovakia, either prior to or during the recent war, pending a more detailed examination of Chapter IV.

ARTICLES 13, 13A, 13B.

1. Amendments affecting Article 13 which were submitted either to that Article or to other Articles of the Charter fall into four main categories:

(a) Those designed to expedite procedure for action by the Organization on applications to use protective measures made under Article 13.

(b) Those which would provide for a transitional period after a Member joins the Organization during which non-discriminatory protective measures might be maintained.

* One or more of the Delegates in the Sub-Committee believed it essential that the substance of this note, with which the Sub-Committee agrees, be included in the official explanation of the text.

(c) Those which would permit, without the prior approval of the Organization, the use of protective measures otherwise inconsistent with the terms of the Draft Charter.

(d) Those designed to provide for new preferential arrangements for economic development purposes.

2. Substantial amendments have been made to Article 13 and Article 13A has been added to meet points (a) and (b). Point (c) was not accepted by a majority of the Sub-Committee, but amendments and additions have been made in an effort at least partially to meet the point. The principal changes and additions are as follows :-

(a) Provision has been included for the Organization to establish time limits within which the Organization shall advise the applicant Member whether or not it concurs in the use of the measure proposed in any given application made to it;

(b) A Member is permitted to institute a proposed measure without the Organization's prior approval provided that the Organization's reply has not been received within the time limit;

(c) If, without prejudice to the other provisions of the Article, it is established in the course of the Organization's examination that

(i) a proposed measure is unlikely to be more restrictive of international trade than any other practicable and reasonable measure which is permitted under the Charter, and

(ii) that the proposed measure is the one most suitable for the purpose

the Organization shall concur in the proposed measure and grant a release;

(d) Adoption of measures inconsistent with the Charter is permitted to preclude increased imports intended to forestall a decision by the Organization, pending such decision.

(e) Article 13A has been added to provide a transitional period during which a Member may maintain non-discriminatory protective measures which are not inconsistent with obligations negotiated with other Members, in operation at the time such Member signed the General Agreement on Tariffs and Trade or the Charter, subject to the Organization's final decision.

3. Consideration was given to the necessity for providing that Members would ensure that provisional action under Articles 13 or 13A (a) would be taken in such a form that it could be readily withdrawn or modified and (b) would be withdrawn or modified either when no longer required or in accordance with a decision of the Organization. The Sub-Committee decided not to include specific provisions in the text to this effect because they were believed to be implicit in the relevant provisions of Articles 13 and 13A.

4. The Sub-Committee agreed that the word "industries" appearing in paragraph 1 of Article 13 is used in its widest sense and therefore includes agriculture.

5. In regard to point (d) of paragraph 1 on page 6, Article 13B has been added providing for new preferential arrangements in the interests of programmes of economic development and reconstruction.

6. The Sub-Committee could not agree whether a decision of the Organization under Article 13B to approve a release from the relevant obligations of Chapter V for new preferential arrangements should be supported by a simple majority or by two-thirds of the Members voting. Opinion in the Sub-Committee was divided

as between these alternatives. Two possible compromises were considered. One of these alternatives was to provide that a simple majority would be the rule but that a Member could claim that in any particular case the release should be supported by two-thirds of the Members voting. Such a claim would be sustained if it was supported by one-third of all the Members. The other alternative was to provide that the voting requirement for the purpose of granting the release should be established by the Organization.

7. The Sub-Committee felt that it could make no recommendation to the Commission as to which course should be followed. It was suggested as one possibility that the Commission itself might decide that it was a matter which would have to be postponed for final decision by the World Conference.

8. The Sub-Committee has, therefore, included in Article 13B the words "by an affirmative vote of two-thirds of Members voting", and placed these words in square brackets. If the decision of the Commission were that such a voting requirement should be established, the square brackets could be removed. If, on the other hand, the decision of the Commission were that a simple majority only would be required, this can be provided for by removing the words in square brackets. Special provision would, of course, need to be included in the text if one of the compromise courses mentioned above were to be adopted.

9. The Sub-Committee considered that the Organization, in making decisions under Article 13B, may have to deal both with the principle of preferences in particular cases and with the details of these preferences. It seemed impracticable to prescribe in detail at this stage to what extent and by what procedure these two aspects of the decision should be dealt with.

10. The Sub-Committee considered that it was not for it to decide whether it is necessary to provide for new preferential arrangements for other purposes and consequently whether Article 13B renders Article 38 (4) unnecessary.

ANNEX I

CHAPTER IV

ECONOMIC DEVELOPMENT

Article 9

Importance of Economic Development in
Relation to the Purpose of this
Charter

The Members recognize that all countries have a common interest in the productive use of the world's human and material resources, and that the industrial and general economic development 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 to economic balance, expand international trade, and raise levels of real income.

Article 10

Development of Domestic Resources
and Productivity

Members shall within their respective jurisdictions take action designed progressively to develop, and where necessary to reconstruct, industrial and other economic resources and to raise standards of productivity through measures consistent with the other provisions of this Charter.

Article 11

Co-operation for Economic Development

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

2. Subject to any arrangements entered into between the Organization and the Economic and Social Council and other appropriate inter-governmental organizations, the Organization shall, within its powers and resources, upon the request of any Member and upon terms to be agreed, and in such collaboration with other appropriate inter-governmental organizations as will use fully the special competence of each, furnish such Member with, or assist such Member to procure, appropriate advice concerning its plans and the financing and the carrying out of its programmes for economic development, and assist Members in the procurement of appropriate technical assistance.

Article 12

Means of Promoting Economic Development

1. Progressive industrial and general economic development requires among other things adequate supplies of capital funds, materials, modern equipment and technology, and technical and managerial skills. Accordingly, the Members shall impose no unreasonable impediments that would prevent other Members from obtaining on equitable terms 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.
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 or unjustifiable action within its jurisdiction injurious to the rights or interests of nationals, real or juridical, of other Members in the enterprise, skills, capital, arts or technology which they have supplied.
3. Any affected Member acting on its own behalf or on behalf of its nationals may present to the Organization a complaint that

action by another Member is inconsistent with its obligations under this Article or under Article 12A. The Organization may request Members concerned to enter into consultation with a view to reaching a mutually satisfactory settlement and may lend its good offices to this end.

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 agreement or statement of principles as to the conduct, practices and treatment of foreign investment.

Article 12A

International Investment for Economic Development

1. Members recognise that, with appropriate safeguards, including measures adequate to ensure that foreign investment is not used as a basis for interference in the internal affairs or national policies of Members, international investment, both public and private, can be of great value in promoting economic development and consequent social progress. They recognize that such development would be facilitated if Members were to afford, for international investments acceptable to them, reasonable opportunities upon equitable terms to the nationals, real or juridical, of other Members and security for existing and future investments. Therefore they agree to provide, consistent with the limitations recognized as necessary in this Article, the widest opportunities for investment and the greatest security for existing and future investments.

2. Members undertake, subject to restrictions imposed in accordance with the Articles of Agreement of the International Monetary Fund or with a special exchange agreement entered into between the Member and the Organization under paragraph of Article 29 of this Charter,

(a) with respect to existing investments or to future investments after they have been made, to impose, directly or indirectly, no requirements on the investments of nationals of other Members which are appreciably more onerous than those which the Member imposes in similar circumstances upon its own nationals or upon the nationals of third countries. Provided that this undertaking shall not affect:

- (i) Requirements in force at the time of making the investment or at the time that the Charter shall have come into effect with respect to the Member, whichever is later;
- (ii) Requirements in force at the time of any substantial addition to the investment or change in the nature of the business based upon the investment, in respect of such addition or such change;
- (iii) Reasonable measures to ensure participation, other than participation under sub-paragraph (iv) below, by the nationals of the Member in the future expansion of any branch of industry within its jurisdiction through increased investment, provided that, if the nationals of other Members whose interests are materially affected believe that the measure taken is inconsistent with the provisions of this paragraph, the Member taking

the measure will provide adequate opportunity for consultation with a view to reaching a satisfactory settlement with the affected nationals;

- (iv) Measures taken to ensure the transfer of ownership, in whole or in part, of any investment within its jurisdiction from the nationals of any other Member to its own nationals, it being understood that such measures will provide for the payment of just consideration for the ownership transferred and that if the nationals of any other Member believe such provision has not been made, the Member will provide adequate opportunity for consultation in the manner described in sub-paragraph (iii) above.

(b) to make just compensation if an interest of a national of another Member is taken into public ownership or placed under public management or occupation.

3. Members also undertake to promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development in cases where such co-operation appears to the Members concerned to be appropriate.

Article 13

Governmental Assistance to Economic Development

1. The Members recognize that special governmental assistance may be required to promote the establishment, development or reconstruction of particular industries and that in appropriate circumstances the grant of such assistance in the form of protective measures is justified. 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.

2. (a) If a Member in the interest of its programme of economic development or reconstruction considers it desirable to adopt any non-discriminatory measure which would conflict with any provision of Chapter V or with any obligation which the Member has assumed through negotiations with any other Member or Members pursuant to Chapter V, such Member 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.

(b) The Organization shall promptly transmit the representations made therein to all other Members.

(c) Any Member which considers that its trade would be substantially affected by the proposed measure shall transmit its views to the Organization within such period as shall be prescribed by the Organization.

(d) The Organization shall then promptly examine the proposed measure to determine whether it concurs in the proposed measure or any modification thereof.

(e) In its examination the Organization shall have regard to the provisions of this Chapter, to the other provisions of this Charter, to the considerations presented by the applicant Member, to the views presented by Members who may be substantially affected, to the stage of economic development or reconstruction of the applicant Member, and the effect which the proposed measure or any modification thereof is likely to have on international trade.

(f) The Organization shall at the earliest opportunity, but ordinarily within 15 days after receipt of the statement referred to in Paragraph 2 (a), advise the applicant Member, in the case of measures referred to in paragraph 3 of this Article, as to the date by which the

Organization will notify the Member whether or not it concurs in principle in the proposed measure or any modification thereof and, in the case of measures referred to in paragraph 4 of this Article, as to the date by which the Organization will notify the Member whether or not it releases the applicant Member from such obligation or obligations as may be relevant, provided that in the case of measures referred to in paragraph 4 of this Article, if a Member does not receive a final reply by the date set by the Organization, such Member after communicating with the Organization may institute the proposed measure, after the expiration of a further 30 days from such date.

3. (a) If as a result of its examination pursuant to subparagraphs 2 (d) and 2 (c) the Organization concurs in principle in any proposed measure or modification thereof 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. The Organization shall establish and notify to the Members concerned a time schedule for such negotiations.

(b) Members undertake that they will commence the negotiations provided for in sub-paragraph (a) of this paragraph within such period as the Organization may prescribe and that they will thereafter, unless the Organization otherwise approves, proceed continuously with such negotiations with a view to reaching substantial agreement in accordance with the time schedule laid down by the Organization.

(c) Upon substantial agreement being reached the Organization may release the applicant Member from the obligation referred to in sub-paragraph (1) of this paragraph 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.

4. (a) If as a result of its examination pursuant to sub-paragraph 2 (d) and 2 (e) of this Article, the Organization concurs in any proposed measure or modification thereof, other than those provided for in sub-paragraph 3 (a) of this Article which would be inconsistent with any provision of Chapter V, the Organization may grant the applicant Member release from any obligation under such provision subject to such limitations as the Organization may impose, provided that, having regard to the provisions of sub-paragraph 2 (c), if it is established in the course of such examination that such measure is unlikely to be more restrictive of international trade than any other practicable and reasonable measure permitted under this Charter which could be imposed without undue difficulty and that it is the one most suitable for the purpose having regard to the economics of the industry concerned and to the current economic condition of the applicant Member, the Organization shall concur in such measure and grant such release as may be required to make such measure effective.

(b) If in anticipation of the concurrence of the Organization in the adoption of a measure notified under paragraph 2 of this Article, other than a measure provided for in sub-paragraph 3 (a) of this Article, there should be an increase or threatened increase in the importations of the product or products concerned, including directly substitutable products, so substantial as to jeopardize the plans of the applicant

Member for the establishment, development or reconstruction of the industry or industries concerned, and if no preventive measures consistent with this Charter can be found which seem likely to prove effective, the applicant Member may, after informing and when practicable consulting with the Organization, adopt such other measures as the situation may require pending a determination by the Organization, provided that such measures do not reduce imports below the level obtaining in the most recent representative period preceding the date on which the Member's original notification was made under paragraph 2.

ARTICLE 13A

Transitional Measures

1. Any Member country may maintain any non-discriminatory protective measure which has been imposed for the establishment, development or reconstruction of particular industries, and which is not otherwise permitted by the Charter, provided (i) that the measure was in operation at the time such country signed the General Agreement on Tariffs and Trade, or if not signatory of that Agreement when it signed the Charter, at the time of signing the Charter; and (ii) that such country has notified the other countries signatories of the Agreement or of the Charter, prior to such signature, of each product on which such a measure is to be maintained and of the nature and purpose of such measure. Any Member maintaining any such measure shall within one month of assuming membership notify the Organization of the measure concerned, the considerations in support of its maintenance and the period for which it wishes to maintain the measures. The Organization shall, as soon as possible but in any case within twelve months of such Member assuming membership, examine and give a decision concerning the measure as if it had been submitted for approval under Article 13.

2. This Article shall not be construed to refer to a measure which would be inconsistent with any obligation that the Member concerned has assumed through negotiations with any other Member or Members pursuant to Chapter V (including negotiations affecting preferential margins) or which would tend to nullify or impair the benefit to such other Member or Members of any such obligation.

3. The Organisation, in making a decision under this Article specifying a date by which any modification or withdrawal is to be made, shall have regard to the possible need of a Member for a suitable period of time in which to make such modification or withdrawal.

ARTICLE 13B.

Preferential Arrangements for Economic Development

1. Members recognize that special circumstances may justify new preferential arrangements between two or more countries, not contemplating a customs union, in the interest of the programmes of economic development or reconstruction of one or more such countries. Subject to such limitations as it deems fit, the Organization may grant by an affirmative vote of two-thirds of Members voting an exception to the provisions of Chapter V to permit such arrangements being made.

2. Any Member or Members contemplating such an arrangement shall so notify the Organization and shall transmit to the Organization a written statement of the considerations in support of the adoption of the arrangement. The Organization shall then examine and give a decision concerning the proposal as if it had been submitted for approval under Article 13. Any country which under the proposed arrangement is to be accorded preferential treatment by another country shall be regarded as an applicant Member for the purpose of that Article.

ANNEX II

Amendments Referred to the Sub-Committee on Chapter
IV and not Withdrawn.

By the Sub-Committee on Articles 14, 15 and 24

Article 15

1. Reservation by the Chinese Delegation to paragraph 3, pending settlement of the outstanding issues in Chapter IV.
2. Reservation made by the New Zealand Delegation on paragraph 4, pending settlement of the outstanding issues in Chapter IV.

By the Sub-Committee on Articles 25 and 27

Article 25

1. Amendment proposed by the Chinese Delegation to paragraph 2 (e) (E/PC/T/W.75).^X The Chinese Delegation also submitted directly to the Sub-Committee on Chapter IV a suggested re-wording of paragraph 2 (e) (E/PC/T/W.260).
2. Reservation made by the Chilean Delegation to paragraph 2 (e) (New York Drafting Committee Report, page 20, note(c)).
3. New sub-paragraph (f) of paragraph 2 proposed by the Cuban Delegation (E/PC/T/W.194).
4. New sub-paragraph (g) of paragraph 2 proposed by the Syrian-Lebanese Delegation (E/PC/T/W.223, page 10, note 16).

By Commission A

1. New Article 26A - Quantitative Restrictions for Protective Purposes - proposed by the Indian Delegation (E/PC/T/W.223, page 24).
2. Amendment proposed by the Cuban Delegation to Article 30 (E/PC/T/W/186).

^X Paragraph 2 (e) of the New York text appears as paragraph 2 (c) in the text as revised by the Sub-Committee on Articles 25 and 27 (E/PC/T/141),