WORKING PARTY 2 ON ARTICLE XVIII

Section Proposed by Ceylon for Inclusion in Report on Ceylon Application

At an early stage of its consideration of the Ceylon measure the Working Party endeavoured to reach some agreement on general principles in regard to the interpretation of the automatic criteria embodied in paragraph 7 (a). It was found, however, that there was considerable divergence of opinion among individual members of the Working Party as to the interpretations that could be placed on these automatic criteria. In regard to the criteria of 7 (a) (i) some members were strongly of the view that the term "industry" should be confined to the particular financial investments made or technical plant erected during the specified period, and, that any extension by way of additional investments or equipment would be tantamount to the establishment of a new industry. Some members thought that the test should be whether the plant established during the war between the dates specified was capable of producing, without substantial modifications, the type of goods for which protection was asked for. Other members thought that considerable flexibility was required in determining these criteria and that their interpretation should be determined having regard to the fact that the intention of Article XVIII was to promote the industrialization of under-developed countries. It was emphasized by this group that automatic criteria had been insisted upon by the under-developed to promote their industrialization and that restrictive interpretations would hinder rather than assist their economic development.

A similar divergence of view was evident in regard to the criteria of 7 (a) (iii). Some members thought that the emphasis in this sub-paragraph was on the fuller and more economic utilization of an applicant contracting party's natural resources and man power and that the raising of the standards of living deserved preponderant emphasis. Other members, however, were equally strongly of the view that rigid tests should be applied towards the determination of the terms "promote" and "indigenous primary commodity". The existence of a primary commodity in an appreciable quantity in any country was of no use, even if it were fit for economic exploitation, unless it had been exploited and got ready for processing. An applicant party must, in order to qualify under this paragraph, establish not merely that it had adequate quantities of an indigenous primary commodity and that an industry had already been established using such a primary commodity, but also that the primary commodity existed in such quantities that its processing was urgently necessary in order to achieve a fuller and more economic use of natural reserves and man power. Other members, however, felt that if an applicant contracting party could show that an industry had been established for the processing of an indigenous primary commodity and that concrete plans existed for the development of the industry and for increased production of the primary commodity, the criteria of 7 (a) (iii) would be met.
In consequence it was found that while some members of the Working Party were prepared to agree that certain products were eligible under sub-paragraph 7 (a) (i), others felt that these same products fulfilled the requirements of 7 (a) (iii). It was, therefore, found that it was not possible in consistence with expedition to reconcile the divergent views held by individual members of the Working Party; and in order, therefore, to enable consideration of the Ceylon measure to proceed, it was agreed that individual members should satisfy themselves in regard to each proposed measure whether the criteria of either sub-paragraph (a) (i) or (a) (iii) had been met, and, that this alternative determination should be accepted as sufficient evidence as to the eligibility of the measure under paragraph 7 of Article XVIII.