SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUB-COMMITTEE C ON ARTICLES 13 AND 14

INFORMAL ANALYSIS OF AMENDMENTS TO ARTICLES 13 AND 14

BY SECRETARIAT

Documents

(1) The following documents* contain the amendments submitted to Articles 13 and 14:

(i) Revised Annotated Agenda - E/CONF.2/C.2/9
   Article 13 - pages 29-54 inclusive
   Article 14 - pages 55-60 inclusive
   together with additional paragraph proposed by Turkey appearing erroneously on page 63

(ii) Amendments proposed by Uruguay to Articles 13 and 14 E/CONF.2/C.2/6/Add.23

(iii) Amendments proposed by Chile to Article 13 E/CONF.2/C.2/9/Add.1

(iv) Argentine amendment to Article 14: corrigendum to include Argentine proposal to delete paragraph 2 of Article 14 E/CONF.2/C.2/9/Corr.5

(v) Supplement to Revised Annotated Agenda containing all other addenda and corrigenda to date and containing particularly addenda and corrigenda regarding Turkish and Ecuadorian amendments to Article 13 E/CONF.2/C.2/9/Add.4/Corr.3

Article 13:

(2) The amendments to Article 13 may be divided into three categories:

(A) Amendments relating to obligations under Chapter IV other than obligations assumed through negotiations (hereafter called non-negotiated commitments).

* The suggestions of the International Chamber of Commerce contained in E/CONF.2/C.2/9/Add.2 and E/CONF.2/C.14 are not included in these documents.
Article 13: (continued)

(B) Amendments relating to obligations assumed through negotiations (hereafter called negotiated commitments).

(C) Other amendments.

(3) The amendments relating to non-negotiated commitments fall into three categories.

(a) There are amendments by Chile and Iraq connected with Article 14. The amendment proposed by Iraq appearing on page 32 of the Revised Annotated Agenda provides that "The Organization shall not raise any objection against any non-discriminatory protective measures instituted by a Member for the purpose of its economic development, if a measure of a similar nature is maintained under similar conditions by any other Member of the Organization in accordance with Article 14."

The amendment proposed by Chile appearing at the top of E/CONF.2/C.2/9/Add.1 provides that the Organization shall authorize measures submitted pursuant to Article 14 "if they are essential elements of the national economy and if their withdrawal might seriously jeopardize the existenc of national industries, the equilibrium of the balance of payments or the maintenance on a sound footing of the national finances of the Member concerned."

(b) There are amendments proposed by China, Colombia, Cuba and Chile which, within a procedure laid down for approval by the Organization, make provision for circumstances under which the Organization "shall" give its approval. The Colombian amendment appearing on page 30, and the Cuban amendment appearing on page 31 of the Revised Annotated Agenda and the Chilean amendment listed second from the top in N/CONF.2/C.2/9/Add.1* like paragraph 4 (b)

* Corrected as shown in E/CONF.2/C.2/9/Add.1/Corr.1
Article 13:
Category (A)
Amendments -
Non-negotiated
Commitments
(continued)

of the Geneva draft all state circumstances under which the Organization shall release a Member from obligations. The Chinese amendment appearing on pages 35 and 36 of the Revised Annotated Agenda includes inter alia a revision of paragraph 4 (c) of the Geneva draft so as to make it another case, when the Organization shall concur in a measure. The Chilean amendment is very far-reaching and is parallel with the Chilean proposal (see page 1 of E/CONF.2/C.3/7) to add the following sub-paragraph in paragraph 2 of Article 20 which provides for exemptions to the general elimination of quantitative restrictions:

"Import restrictions on industrial products applied by Member countries in an early stage of economic development for the sole purpose of protecting the growth of industries which are necessary for their sound and normal development and raising the living and consumption standards of its population."

(c) There are other amendments mainly comprehensive amendments and redrafts affecting the whole of that part of Article 13 concerned with non-negotiated commitments. These are arranged as far as possible commencing with the most far-reaching amendments and ending with the least far-reaching.

(1) The Argentine amendment appearing on pages 39, 40, 41 and 42 of the Revised Annotated Agenda maintains paragraph 2 (a) of the Geneva draft subject to acceptance of amendments or reservations proposed in the wording of Chapter IV. Paragraph 2 (b) is retained unchanged and /paragraph 2 (c)
Article 13:
Category (A)
Amendments -
Non-negotiated Commitments
(continued)

paragraph 2 (c) is amended so that the Organization examines the proposed measure but not in order to determine whether it concurs in it. Since paragraphs 4 and 5 of the Geneva draft are deleted in the Argentine amendment*, Members would appear to have complete freedom to adopt measures in conflict with non-negotiated commitments subject only to notification to the Organization and the right of the affected Members to transmit their views to the Organization and the duty of the Organization to examine the measures. In this connection attention is drawn to the Argentine proposal to include the following paragraph in Article 20 exempting Members from the obligation not to impose quantitative restrictions imposed by paragraph 1 as listed on page 1 of E/CONF.2/C.3/7:
"Countries which are at an early stage of industrial development and those which have not reached an advanced stage of industrialization as a whole shall in conformity with the purposes and objectives set forth in Chapter 1 of this Charter, not be required to apply the provisions of paragraph 1 of this Article."

(ii) The Uruguayan amendment appearing in E/CONF.2/C.2/9/Add.23 provides for the deletion of paragraphs 4 and 5, the retention of paragraphs 2 (b) and (c) and the modification of paragraph 2 (a) of the Geneva draft so that a Member may adopt measures in conflict with non-negotiated commitments subject to notification to the Organization.

* Paragraph 4 (c) as redrafted in the Argentine amendment relates solely to negotiated commitments.
Article 13: Category (A)
Amendments - Non-negotiated Commitments
(continued)

Organization and the Members of the Organization to the right of any Member to transmit its views to the Organization and to the duty of the Organization in such circumstances to examine the measures.

(iii) The Indian amendment appearing on pages 46 and 47 of the Revised Annotated Agenda permits Members to adopt non-discriminatory measures in conflict with Articles 18, 20 or 31 for specified purposes and subject to the suitability of the measure for the purpose. The only redress is that if it is determined that serious prejudice to the interests of other Members is caused or threatened, "the Member applying the measure shall, upon request, discuss with the Organization the possibility of liberalizing the measure".

(iv) The Ecuadorian amendment appearing on page 29 of the Revised Annotated Agenda proposes to allow Members freedom to take at their own discretion such measures as in their judgment are necessary and essential in order to give effect to the assistance referred to in paragraph 1. The Organization is to intervene upon the request of any Member subsequent to the adoption of such measure.

(v) The Mexican amendment appearing on pages 37, 38 and 39 of the Revised Annotated Agenda provides freedom to adopt measures in conflict with non-negotiated commitments subject to subsequent approval by the Organization. However, the Mexican amendment includes a new paragraph 5 (b) replacing the present text
Article 13:
Category (A)
Amendments -
Non-negotiated
Commitments
(continued)

which provides that "if the Member does not comply with the recommendations of the Organization within the time proscribed, its case shall be considered in accordance with Article 89 and other relevant Articles of the Charter."

(vi) The amendments proposed by China appearing on pages 35, 36 and 37 of the Revised Annotated Agenda provide freedom for Members to adopt measures in conflict with non-negotiated commitments subject to subsequent approval by the Organization and the removal or modification of the measure, if the Organization disapproves. As already stated above under sub-paragraph (b) of this paragraph the Chinese amendment includes additional circumstances under which the Organization "shall" give its approval.

(vii) The Turkish amendment (page 29 of the Revised Annotated Agenda and E/CONF.2/C.2/9/Add.4/Corr.3) provides for the delegation of the words "considers it desirable to adopt" and the substitution of the word "adopts" and also the deletion of the word "proposed" appearing before "measure" at the end of the paragraph. The Turkish amendment states that the remainder of the Article should be amended similarly. Accordingly the Turkish amendment provides for subsequent instead of prior approval by the Organization.

(viii) The Ceylon amendment appearing on pages 43, 44 and 45 of the Revised Annotated Agenda allows a Member to adopt measures in conflict with /non-negotiated
Article 13: Category (A) Amendments - Non-negotiated Commitments (continued)

Article 13: Category (B) Amendments - Negotiated Commitments

(4) The following amendments relate to the provisions of Article 13 concerning negotiated commitments arranged as far as possible commencing with the most far-reaching amendments and concluding with the least far-reaching.

(i) The Uruguayan amendments appearing in E/CONF.2/C.2/6/Add.23 provides for the deletion of paragraphs 3 and 5, for a redraft of paragraph 2 (a) and for the retention of paragraphs 2 (b) and (c). As a result a Member would be able to adopt measures in conflict with negotiated commitments subject to notification to the Organization and to the Members of the Organization, to the right of any Member to transmit its views to the Organization and to the duty of the Organization under such circumstances to examine the measures.

(ii) Ecuador proposes (page 29 of Revised Annotated Agenda and E/CONF.2/C.2/9/Add.4/Corr.3) to allow Members freedom to take at their own discretion such measures as

Article 13:
Category (B)
Amendments -
Negotiated
Commitments
(continued)

in their judgment are necessary and essential in order to give effect to the assistance referred to in paragraph 1. The Organization is to intervene upon the request of any Member subsequent to the adoption of such measure.

(iii) The Mexican amendment (pages 37, 38 and 39 of Revised Annotated Agenda) allows Members freedom to adopt measures in conflict with negotiated commitments subject to subsequent negotiations and approval by the Organization, the procedure being substantially the same as in the Geneva draft. However the Mexican amendment includes a new paragraph 5 (b) replacing the existing text which provides that "if the Member does not comply with the recommendations of the Organization within the time prescribed, its case shall be considered in accordance with Article 89 and the other relevant Articles of this Charter."

(iv) The Chinese amendment (pages 35 and 36 of Revised Annotated Agenda) is substantially the same as that proposed by Mexico except that it does not include the new paragraph 5 (b), proposed by Mexico which would permit a Member to maintain a measure despite failure of the Organization to approve.

(v) Turkey proposes (page 29 of Revised Annotated Agenda and E/CONF.2/C.2/9/Add.4/Corr.3) to amend paragraph 2 (a) so as to delete the words "considers it desirable to adopt" and substitute the word "adopts" and to delete the word "proposed" appearing before "measure" at the end of the paragraph. The Turkish amendment states that the remainder of the Article should be amended similarly. Accordingly the Turkish amendment provides for

/ subsequent
Article 13:
Category (B)
Amendments -
Negotiated
Commitments
(continued)

(vi) The Argentine amendment appearing on pages 39, 40, 41 and 42 of the Revised Annotated Agenda maintains paragraph 2 (a) subject to acceptance of Argentine amendments or reservations in the wording of Chapter IV. Paragraph 2 (b) is as in the Geneva draft. Paragraph 2 (c) is amended so that the Organization examines proposed measures but not in order to determine whether it concurs in them. Under paragraph 3 (a) the function of the Organization is limited to determining whether or not a proposed measure would be inconsistent with negotiated commitments and to sponsoring and assisting in negotiations. Paragraph 3 (b) is amended to delete any reference to the Organization and paragraph 3 (c) is entirely deleted. Under paragraph 3 (b) as amended Members are required to commence negotiations "with a view to reaching essential agreement". It is apparently the intention of the Argentine amendment that a proposed measure may not be adopted unless essential agreement is reached between negotiating parties. However provision is also made for the applicant Member to take transitional action in respect of negotiated commitments in the event of a flood of imports, in the circumstances and on the lines of the transitional action envisaged in paragraph 4 (c) of the Geneva draft.

(vii) The Burmese redraft (pages 48 to 54 inclusive of Revised Annotated Agenda) does not vary greatly in substance from the Geneva draft. However there is provision in paragraph 4 (f) of the Burmese redraft for transitional action in respect of negotiated
of negotiated commitments in the event of a flood of imports on the lines of paragraph 4 (c) of the Geneva draft. The Organization may also in paragraph 3 (f) of the Burmese redraft allow a Member to adopt a measure under certain circumstances even if no substantial agreement is reached.

The Chilean amendment at the bottom of E/CONF.2/C.2/9/Add.1 proposes that in paragraph 3 (c) the Organization "shall" and not merely "may" release the applicant Member from its obligations upon substantial agreement being reached by the negotiating parties.

The redrafts submitted by Ceylon and India (Revised Annotated Agenda pages 43, 44 and 45 and 46 and 47 respectively) are substantially the same as the Geneva draft as regards negotiated commitments.

Category C amendments are as follows:

(1) Drafting amendments proposed by the United Kingdom appearing on pages 29 and 31 of the Revised Annotated Agenda.

(11) Amendments proposed by the Philippines appearing on pages 30 and 31 of the Revised Annotated Agenda which are consequential on the proposed Philippine amendment to Article 14 - see paragraph 6 (ii).

(iii) Redraft of paragraph 1 of Article 13 proposed by Uruguay (E/CONF.2/C.2/6/Add.23) according to which inter alia Members recognize that governmental assistance may be required to promote the establishment, development or reconstruction of "industry or agriculture" and not of "particular industries or particular branches of agriculture".

(iv) Amendment proposed by New Zealand (page 34 of Revised Annotated Agenda) to add the maintenance of particular industries etc., to the purposes
Article 13: Category (C) Other Amendments (continued)

to the purposes for which Members recognize in paragraph 1 that special governmental assistance may be required. Similarly in paragraph 4 (c) Members may, according to the New Zealand amendment, take transitional action if their plans for the maintenance and not merely for the establishment, development or reconstruction of industry or industries concerned or branches of agriculture concerned are jeopardized.

(v) Amendment proposed by Cuba (pages 32 and 35 of Revised Annotated Agenda) to include the maintenance of particular industries or branches of agriculture among the purposes for which Members recognize in paragraph 1 that special governmental assistance may be required. The Cuban amendment also proposes that a measure under paragraph 2 (a) may be one in the interest of a Member's programme of maintenance as well as of its programme of economic development or reconstruction and that under paragraph 2 (c) the ITO shall have regard to the stage of economic development of the applicant Member including the maintenance of its economy. Cuba also proposes a similar amendment to paragraph 4 (c) as is proposed by New Zealand. (See sub-paragraph iv above)

(vi) Additional paragraph 6 proposed by Chile appearing in E/CONF.2/C.2/Add.1 according to which "if a Member considers that the Organization's decision is not in accordance with the letter or the spirit of the Charter, and that the situation or the considerations put forward by the Member have not been duly appreciated and taken into account, the Member may have recourse to the procedure laid down in Chapter VIII."

(6) The amendments
Article 14

(6) The amendments to Article 14 consist of two far-reaching proposals by Argentina and the Philippines and less far-reaching amendments from a number of other countries. These are analyzed below:

(i) The Argentine proposal appearing on pages 56, 57, 58 and 59 of the Revised Annotated Agenda and in E/CONF.2/C.2/9/Corr.5 provides for the deletion of paragraph 2 and of the latter part of paragraph 1 beginning with the word "any" at the end of line 6 on page 16 of the uncorrected Geneva draft.* Sub-paragraphs (a), (b) and (c) are modified so as to contain simply an obligation to notify. Consequently according to the Argentine amendment any Member may maintain existing measures of the type described in the preamble to paragraph 1 subject only to an obligation to notify other Members and subject to the measures not being inconsistent with negotiated commitments.

(ii) The proposal of the Philippines appearing on pages 55 and 56 of the Revised Annotated Agenda provides that for certain specified purposes any Member shall be given general authority to adopt any non-discriminatory measure in conflict with any non-negotiated commitment for such period as the Organization may specify. The general authority is granted subject to certain conditions the principal of which is that the Organization determines as a matter of fact that the applicant Member is underdeveloped or war devastated.

* As indicated in E/FC/T/186/Corr.1 the word "any" in the sixth line on page 16 of the draft Charter begins a new section of paragraph 1 which refers to all three sub-paragraphs (a), (b) and (c) of paragraph 1 and not merely to sub-paragraph (c). /(111) The amendment
Article 14:

(continued)

(iii) The amendment proposed by the United Kingdom appearing on page 56 of the Revised Annotated Agenda is to limit measures in respect of which the procedure of Article 14 applies to those in force on 1 September 1947.

(iv) The Ecuadorian amendment appearing on page 57 of the Revised Annotated Agenda proposes that under paragraph 1 (a) a Member, which is a signatory of the General Agreement on Tariffs and Trade, shall have given notification thirty days prior not to the date of the signature of the agreement but to the date of deposit of the instrument of acceptance.

(v) Amendments by Costa Rica, Italy, Uruguay and Turkey to paragraph 1 (b) appearing on pages 57, 58 and 59 of the Revised Annotated Agenda all propose a date for notification having relation to the date of ratification of the Charter instead of on day of signature of the Charter, as in the present text. The delegation of Costa Rica is understood to be willing to withdraw its amendment, if those of Ecuador and Turkey are accepted.

(vi) The Costa Rican amendment to paragraph 1 (c) appearing on page 59 of the Revised Annotated Agenda is to replace the word "signed" by the term "ratified".

(vii) The Turkish amendment appearing erroneously among amendments relating to Article 15 on page 63 of the Revised Annotated Agenda relates in fact to Article 14 as indicated in E/CONF.2/C.2/9/Add.4/Corr.3. It proposes that "changes in customs tariffs made in consequence of an actual or projected devaluation may not in any way be considered as constituting a protective measure".

/(7) The following
The following is an extract from the Chairman's statement at the sixteenth meeting of Committee II regarding Article 14:

"The attention of the Sub-Committee on Articles 13 and 14 is invited to the statement made by the representative of New Zealand that, if the New Zealand amendment to Article 13 were accepted, a consequential amendment would also be required in Article 14, and also to the request of Czechoslovakia that a careful examination should be made of the time schedule in paragraph 1 (a) of Article 13 so that this should correspond with those in paragraphs 1 (b) and 1 (c) as eventually approved. The additional paragraph in Article 14 proposed by Turkey (E/CONF.2/C.2/9, page 63 and E/CONF.2/C.2/9/Add.4/Corr.3) is referred to the Sub-Committee but the Sub-Committee is authorized after examination of this amendment to refer it to Committee III if such reference is considered desirable."