SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUB-COMMITTEE C ON ARTICLES 13 AND 14

REVISED DRAFT REPORT OF SUB-COMMITTEE C OF COMMITTEE II ON ARTICLES 13 AND 14

1. Sub-Committee C was appointed at the sixteenth meeting of Committee II with terms of reference as follows:

"To examine and submit recommendations to Committee II concerning the proposals on Articles 13 and 14 with authority to consult, if considered necessary, with the Sub-Committee of Committee III on Articles 20 and 22."

2. The Sub-Committee was composed of representatives of:

- Argentina
- Australia
- Brazil
- Canada
- China
- Colombia
- Cuba
- India
- Iraq
- Mexico
- Netherlands
- Norway
- Philippines
- United Kingdom
- United States
- Uruguay

Dr. Gustavo Gutierrez (Cuba) was elected Chairman of the Sub-Committee.

3. A number of representatives of delegations who were not Members of the Sub-Committee attended as observers and in many cases took part in the discussion on particular amendments for which they were primarily responsible or in which they had a special interest.

4. The Sub-Committee held fourteen meetings. It examined Articles 13 and 14 and the amendments submitted thereto as listed in Annex A. After the Sub-Committee had almost completed its work on Article 13 and the amendments submitted thereto, the Article was also examined by the Co-ordinating Committee. The Sub-Committee took into account the text submitted by the Co-ordinating Committee (E/CONF.2/45/Rev.1) in accordance with the recommendations of the Heads of Delegations (E/CONF.2/51). As a result the Sub-Committee decided to recommend texts of Articles 13 and 14 as set out in Annex B, of which paragraph 2 of Article 13 is based largely on proposals made by
made by the representative of Brazil amended by the representative of Mexico
to cover anti-forestalling measures and paragraph 4 (c) on proposals of the
representative of Brazil in the light of a statement by the representative
of Colombia. It was agreed that this recommendation disposed of all the
amendments listed in Annex A.

5. The Sub-Committee considered the amendment of Cuba to insert the word
"maintenance" and the amendment of New Zealand to insert the word "maintain"
in paragraph 1 of Article 13 and the amendments arising as a consequence
thereof and expressed the view that the amendments were already covered in
the text set out in Annex B. It was agreed that the word "development", as
used in Article 13, might cover cases in which the branch of industry or
agriculture to be developed had been established for some time before the
date of the Member's application to the Organization.

6. The Sub-Committee considered it desirable to record that paragraph
4 (b) (ii) as originally submitted to the Co-ordinating Committee ended with the
words "reduced as a result of new or increased restrictions imposed by some
other government or governments".

7. With regard to the meaning of the word "processing" appearing in
paragraphs 4 (b) (ii) and 4 (b) (iii) of Article 13 it was agreed that
processing meant the transformation of a primary commodity into semi-finished
or finished goods but did not refer to highly developed industrial processes
such as the manufacture of precision instruments.

8. With regard to the reference to international trade at the end of
paragraph 4 (b) (iii) of Article 13 it was agreed that this was a reference
to international trade in general and not to trade in the specific product
to which the measure in question related.

9. With regard to the interpretation of the words "materially affected" in
paragraphs 3 and 4 (d) of Article 13 it was agreed that this term was not
restricted to those countries which in the past were the principal suppliers
and that it would be proper for the Organization to have regard, for instance,
to the interests of those Members which supplied a large proportion of the
imports of the applicant Member in the product concerned, those Members which
were substantially interested in exporting the product to world markets, and
those Members whose economies were materially dependent on exports of the
product.

10. With regard to paragraph 4 (e) of Article 13 it was agreed that the
phrase "pending a decision by the Organization" referred to the final
decision, which would be taken by the Conference in the event of previous
adverse decisions being followed by an appeal to the Conference by the
/applicant Member
applicant Member.

11. With regard to the proviso at the end of paragraph 4 (e) of Article 13 it was agreed that this proviso would permit a Member to prohibit entirely or reduce the imports of a product to the extent needed to ensure that, over the whole period following the date of notification of the Member's application, that product was not imported at a rate greater than in the most recent representative period preceding the date of notification.

12. With regard to paragraph 4 (f) of Article 13 it was agreed that the date cited therein by which the applicant Member would be notified whether or not it would be released from its obligations was the date on which the Executive Board would give its ruling. It was also noted that paragraph 2 of Article 73 permitted the Conference to establish rules of procedure appropriate for the carrying out of its functions during the intervals between its sessions, e.g. voting by cable or air mail.

13. In connection with Article 14 the attention of the Sub-Committee was invited to the possibility that in certain special circumstances beyond their control some signatories to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment may find themselves unable for some time to apply the provisions of the General Agreement on Tariffs and Trade. The Sub-Committee considered that an application should be made to the Contracting Parties for an amendment to that Agreement to meet these cases. If the amendment were accepted, it would then be possible for the Contracting Parties to consider an application for new dates to be established and to replace those of 1 September 1947 and 10 October 1947 at present specified in paragraph 6 of Article XVIII of the Agreement. In order to prevent any decision under the provisions of such an amendment, if it were accepted by the Contracting Parties, from becoming ineffective on the date of entry into force of the Charter the Sub-Committee agreed to insert the proviso appearing at the end of paragraph 1 (a) of Article 14. The representative of Brazil reserved his position pending a decision by the Contracting Parties with regard to such an amendment to the agreement.

14. The Sub-Committee agreed that the provisions of paragraph 2 of Article 14 as set out in Annex B were intended to qualify the statement in paragraph 1 that certain measures might be maintained and in an earlier draft considered by it had been contained in a proviso to paragraph 1. It was agreed that

* Proposal of representative of Australia is to substitute the words "increase in the imports" for "date of notification of the Member's application".
the Central Drafting Committee should be asked to consider whether the conversion of the proviso to paragraph 1 into a separate paragraph would have the effect of obscuring the qualify and, if so, to make any consequential changes necessary in paragraph 1, such as, for example, the addition of the words "Until the Organization gives a decision under paragraph 2 of this Article" at the beginning of the paragraph before the words "any Member may maintain".

15. The representative of Argentina reserved the position of his country with respect to Articles 13 and 14.
### ANNEX A

**SUBMITTED TO ARTICLES 13 AND 14**

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(a) Initial symbol E/CONF.2 omitted
(b) See also E/CONF.2/C.2/9/Add.4/Corr.3
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(a) Initial symbol E/CONF.2/ omitted
(b) See also E/CONF.2/C.2/9/Add.4/Corr.3
(c) See E/CONF.2/C.2/6/Add.23
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/ANNEX B
ANNEX B

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, or particular branches of agriculture, 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 economic development or reconstruction or for the purpose of increasing a most favoured nation rate of duty in connection with the establishment of a new preferential agreement in accordance with Article 15 considers it desirable to adopt any non-discriminatory measure affecting imports which would apply to any product in respect of which the Member has assumed an obligation through negotiations with any other Member or Members pursuant to Chapter IV, but which would not conflict with the provisions of that Chapter, such Member

(i) shall enter into direct negotiations with all the other Members which have contractual rights with a view to obtaining agreement. The Members shall be free to proceed in accordance with the terms of any such agreement, provided that the Organization is informed of the results of the negotiations; or

(ii) shall initially or may in the event of failure to reach agreement under sub-paragraph (i) above apply to the Organization. The Organization shall determine, from among Members which have contractual rights, the Member or Members materially affected by the proposed measure and shall sponsor
negotiations between the applicant Member and these Members with a view to obtaining expeditious and substantial agreement. The Organization shall establish and communicate to the Members concerned a time schedule for such negotiations, following as far as practicable any time schedule which may have been proposed by the applicant Member. The Members shall commence and proceed continuously with such negotiations in accordance with the time schedule laid down by the Organization. At the request of a Member the Organization may, where it concurs in principle with the proposed measure, assist in the negotiations. Upon substantial agreement being reached, the applicant Member may be released by the Organization from the obligation referred to in this paragraph, subject to such limitations as may have been agreed upon in the negotiations between the Members concerned.

(b) If as a result of action initiated under this paragraph, there should be an increase in the importations of the product or products concerned, including products which can be directly substituted therefor, which if continued would be so great as to jeopardize substantially the establishment, development or reconstruction of the industry, industries or branches of agriculture 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; Provided that such measures do not restrict imports more than necessary to offset the increase in imports referred to in this sub-paragraph. Except in unusual circumstances, such measures shall not reduce imports below the level obtaining in the most recent representative period preceding the date on which the Member initiated action under sub-paragraph (a) of this paragraph. The Organization shall determine, as soon as practicable, whether such measures should be continued, discontinued or modified. Such measures shall in any case be terminated as soon as the Organization determines that the negotiations are completed or discontinued. It is recognized that the contractual relationships referred to in sub-paragraph (a) of this paragraph involve reciprocal advantages, and therefore any other Member which has a contractual right in respect of the product to which such action relates, and whose trade is materially affected by the action, /may suspend
may suspend the application to the trade of the applicant Member of such substantially equivalent obligations or concessions under Chapter IV, the suspensions of which the Organization does not disapprove. Any Member intending to suspend such application shall consult the Organization before doing so.

3. In the case of any non-discriminatory measure affecting imports which would conflict with the provisions of Chapter IV, and which would apply to any product in respect of which the Member has assumed an obligation through negotiations with any other Member or Members pursuant to Chapter IV, the provisions of paragraph 2 (a) (ii) shall apply; Provided that before granting a release the Organization shall afford adequate opportunity for all Members which it determines to be materially affected to express their views. The provisions of paragraph 2 (b) shall also be applicable in this case.

4. (a) If a Member in the interest of its economic development or reconstruction considers it desirable to adopt any non-discriminatory measure affecting imports which would conflict with any provision of Chapter IV, but which would not apply to any product in respect of which the Member has assumed an obligation through negotiations with any other Member or Members pursuant to Chapter IV, such applicant Member shall so notify the Organization and shall transmit to the Organization a written statement of the considerations in support of the adoption, for a specified period, of the proposed measure.

(b) After application by a Member the Organization shall concur in the proposed measure and grant release from such provision for a specified period if, having particular regard to the applicant Member's need for economic development or reconstruction, it is established that the measure

(i) is designed to protect a branch of industry, established between 1 January 1939 and the date of signature of the Final Act of the United Nations Conference on Trade and Employment, which was protected during that period of its development by abnormal conditions arising out of the war; or

(ii) is designed to promote the establishment or development of a branch of industry for the processing of an indigenous primary commodity, when the external sales of such commodity have been materially reduced as a result of new or increased restrictions
restrictions imposed abroad; or

(iii) is necessary in view of the possibilities and resources of
the applicant Member to promote the establishment or
development of a branch of industry for the processing of an
indigenous primary commodity, or for the processing of a
by-product of such a branch of industry which would otherwise
be wasted, in order to achieve a fuller and more economic
utilization of the applicant Member's natural resources and
manpower and, in the long run, to raise the standard of living
within the territory of the applicant Member and is unlikely to
have a harmful effect in the long run, on international trade; or

(iv) 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 is the one most suitable for the purpose having regard
to the economics of the branch of industry or agriculture
concerned and to the applicant Member's need for economic
development or reconstruction;

Provided that

I. any proposal by the applicant Member to apply any such measure,
with or without modification after the end of the initial
period, shall not be subject to the provisions of this sub-
paragraph;

II. the Organization shall not concur in any measure under the
provisions of sub-paragraph b (i), b (ii) or b (iii) above
which is likely to cause serious prejudice to exports of a
primary commodity on which the economy of another Member is
largely dependent.

(c) The applicant Member shall apply all measures under sub-paragraph (b)
above in such a way as to avoid unnecessary damage to the commercial or
economic interests of any other Member including interests under
Articles 3 and 9.

(a) If the proposed measure does not fall within the provisions of sub-
paragraph (b), the Member

(i) may enter into direct consultations with the Member or Members
which, in its judgment, will be materially affected by the
measure, with a view to obtaining agreement. At the same time,
the Member shall inform the Organization of the consultations
relative thereto in order to afford the Organization an
/opportunity to
opportunity to determine whether all materially affected Members are included within such consultations. Upon complete or substantial agreement being reached, the Member interested in taking the measure shall apply to the Organization for release. The Organization shall promptly examine the application to ascertain whether the interests of all the materially affected Members were duly taken into account. If the Organization reaches this conclusion, with or without further consultations between the Members concerned, it shall release the applicant Member from its obligations under the relevant provision of Chapter IV, subject to such limitations as it may impose; or may initially or in the event of failure to reach complete or substantial agreement under sub-paragraph (i) above apply to the Organization. The Organization shall promptly transmit the statement submitted under sub-paragraph (a) above by the applicant Member to the Member or Members which are determined by the Organization to be materially affected by the proposed measure. Such Member or Members shall, within the time limits prescribed by the Organization, inform the Organization whether, in the light of the anticipated effects of the proposed measure on the economy of such Member or Members, there is any objection to the proposed measure. The Organization shall,

I. if there be no objection to the proposed measure on the part of the affected Member or Members, immediately release the applicant Member from its obligations under the relevant provisions of Chapter IV; or

II. if there be any objection, promptly examine the proposed measure, having regard to the provisions of the Charter, to the considerations presented by the applicant Member and its need for economic development or reconstruction, to the view of the Member or Members determined to be materially affected, and to the effect which the proposed measure, with or without modifications, is likely to have, immediately and in the long run, on international trade, and in the long run, on the standard of living within the territory of the applicant Member. If, as a result of such examination, the Organization concurs in the proposed measure, with or without modification, it shall release the applicant Member from its obligations under the relevant provision of Chapter IV, subject to such limitations as it may impose.

/(e) If in
(e) If in anticipation of the concurrence of the Organization in the adoption of a measure referred to in this paragraph there should be an increase or threatened increase in the importations of the product or products concerned, including products which can be directly substituted therefor, so substantial as to jeopardize the establishment, development or reconstruction of the industry, industries or branches of agriculture 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 decision by the Organization on the Member's application; 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.

(f) In the case of measures referred to in this paragraph, the Organization shall, at the earliest opportunity but ordinarily within fifteen days after receipt of an application under the provisions of sub-paragraph (b) or (d) (i) or (d) (ii) above advise the applicant Member of the date by which it will be notified whether or not it is released from such obligation or obligations as may be relevant. This date shall be the earliest practicable but shall not be more than ninety days subsequent to the receipt of such statement or application; Provided that, if before the date set, unforeseen difficulties arise, the period may be extended after consultation with the applicant Member. If the applicant Member does not receive such decision by the date set, it may after informing the Organization, institute the proposed measure.

5. The Organization and the Members concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

Interpretative Note

Paragraph 4 (b) (ii) and 4 (b) (iii)

The word "processing" as used in these sub-paragraphs means the transformation of a primary commodity into semi-finished or finished goods but does not refer to highly developed industrial processes.

Article 14

Transitional Measures

1. Any Member may maintain any non-discriminatory protective measure affecting imports which has been imposed for the establishment, development or reconstruction of
reconstruction of particular industries, or particular branches of agriculture, and which is not otherwise permitted by this Charter; Provided that notification was given of such measure and of each product to which it relates:

(a) in the case of a Member signatory to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, in respect of measures in force on 1 September 1947 to the signatories of that Act not later than 10 October 1947, subject to the provisions of paragraph 6 of Article XVIII of the General Agreement on Tariffs and Trade; Provided that, if in special circumstances the Contracting Parties to that Agreement agree to dates other than those specified in this sub-paragraph, such other dates shall apply;

(b) in the case of any other Member, in respect of measures in force on the date of deposit of its instrument of acceptance of the Charter or on the date of entry into force of the Charter, whichever is the earlier, in the former case to the signatories of the Final Act of the United Nations Conference on Trade and Employment and in the latter case to the Organization;

2. Any Member other than a Contracting Party to the General Agreement on Tariffs and Trade maintaining any such measure shall within one month of assuming Membership in the Organization notify it of the considerations in support of the maintenance of the measure and the period for which it wishes to maintain it, and the Organization shall, as soon as possible, but in any case within twelve months of such Member assuming Membership in the Organization, examine and give a decision concerning the measure as if it had been submitted to the Organization for its concurrence under Article 13.

3. Any measure approved in accordance with the provisions of Article XVIII of the General Agreement on Tariffs and Trade in effect at the time the Charter enters into force may remain in effect thereafter, subject to the possibility of review by the Organization.

4. This Article shall not be construed to apply to any measure relating to a product in respect of which the Member has assumed an obligation through negotiations.

5. The Organization, in making a decision under this Article specifying a date by which any modification in or withdrawal of the measure 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.