The issue being debated is whether the prior approval of the Organisation should be declared a condition precedent to the adoption of certain protective measures by member countries. I doubt myself whether it is wholly correct to present the fundamental point of principle involved in this form, and I hope I may be forgiven if I cover a somewhat wider field and take the opportunity now presented to submit the case for the Amendment we have proposed, namely, the insertion of a new Article, No. 26(a), relating to Quantitative Restrictions for protective purposes - an Amendment which appears to me to raise issues not all compressible within the narrow compass of the concept of prior approval. In attempting to make out this case I feel I am in the position not of one defending an accused person standing his trial, nor even of one arguing an Appeal on behalf of a person already tried and sentenced, but unhappily - and I say this after listening to the magnificently denunciatory speech made by Mr. Clair Wilcox - of one pleading for a reprieve for a condemned man upon whom sentence of death is about to be carried out. For this very reason, Mr. Chairman, I shall try to be as brief as possible consistently with the importance of the subject, and shall only employ the major arguments in support of my case.

Human ingenuity has, in course of time and especially within the past two decades, devised innumerable protective methods, some direct and overt, others concealed. It has been the endeavour of some of the distinguished Delegations present here, in connection with the discussions on the so-called Technical Articles, to track down as many as possible of the more recent and therefore perhaps more capricious protective devices, and put them on the black list. With these I shall not here concern myself. I shall confine my remarks instead to the four major protective instruments - Tariffs, Subsidies, State Trading - which last can be made to cover a multitude of sins - and Quantitative Restrictions.

What is the attitude we have taken up in the Charter with respect to each of these protective devices? On tariffs we have fixed no ceiling whatever, nor have we imposed any restriction on a country's freedom of action in this respect, except to the
extent determined by obligations which it has voluntarily undertaken. On subsidies, too, we have not attempted to set any limit, and it is of interest to note that where serious prejudice to the interest of any number is caused by subsidisation, the Charter provides for no more than a discussion between the parties concerned. When we come to state trading, however, our generosity seems to know no bounds - it is truly staggering in its lavishness.

Quite otherwise, Mr. Chairman, is our position with respect to quantitative restrictions. Article 25 bans it altogether, with certain exceptions enumerated in later paragraphs of that article and in Article 26. But the use of quantitative restrictions for protective purposes is covered by no exception, and a country desiring to employ it in the interests of its programme of economic development is left to have recourse to the provisions of that omnibus article, Article 13. Mr. Chairman, I have looked at that article a number of times, both the New York version and the revised draft currently under discussion in the appropriate Sub-Committee. They are both masterly drafts, but masterly, some might say, mainly in the sense of preventing certain things without appearing to prevent them - an uncharitable critic might even say that certain provisions appear perilously like elaborate circumlocution and the net effect of it all an involved negative. I am myself reminded, when reflecting on this Article, of the story of the practical joker who sent a blind man into a dark room to search for a black cat which was not there. We have an unpleasant feeling, Mr. Chairman, that if we allowed ourselves to be influenced by the superficial reasonableness of the procedure laid down in Article 13, we might find ourselves engaged on the same errand as that poor unfortunate blind man.

The truth is, Mr. Chairman, that quantitative restriction has become an object of deep distrust and suspicion because it has been unable to live down its past. We admit that it has in the past been greatly misused, though let me hasten to add we are not one of the guilty ones. We believe, however, that under proper safeguards, and subject to acceptable criteria, it can be made to serve a constructive role under conditions of an expansionist world economy.

What, let us ask, are the reasons which have been advanced in favour of prior approval in the case of quantitative restrictions? These are:-

(1) Quantitative Restriction is a particularly arbitrary form of restriction and is likely to be abused in the absence of prior approval.

(2) The ban on quantitative restriction and the stipulation of this rigid procedure are necessary for maintaining "the balance of the Charter".

(3) If no prior approval is provided for, the Organisation may be placed in the unhappy position of having to ask for a reversal of action already taken.
(4) Equity demands that the procedure for granting release from a negotiated obligation, such as a tariff concession, should be the same as that for authorising the use of quantitative restrictions for protective purposes, as otherwise quantitative restrictions might be used to nullify the benefit of tariff concessions granted by agreement.

Let me deal with these arguments and test their validity in the light of the precise terms of the Amendment 26 (a) which we have proposed.

In the first place, is quantitative restriction more arbitrary than the other forms of restrictions, the use of which is permitted under the Charter without prior approval? Under the Charter, a country is free to raise its unbound tariffs to any extent it pleases, though the arbitrariness allowed in respect of tariffs can be equally destructive of international trade. Nor does the Charter require prior approval in the matter of subsidies or state trading, both of which can be manipulated by governments as arbitrarily as quantitative restrictions can be.

If a country wishes to institute a new state monopoly for the importation of a particular product, it can do so under the Charter without prior approval, and yet what is the difference in substance or in effect, between quantitative restrictions and state monopoly? Is the one really more arbitrary than the other? That is to say, is a state which is guided purely by considerations of the good of the community likely to behave more arbitrarily than a state enterprise which is guided by those considerations as well as by the profit motive? It may be argued that state monopolies are subject to negotiation, even though they can be instituted without prior approval. But equally, quantitative restrictions also might be made subject to negotiation, if desired.

That mystic word "balance", to which I referred a little while ago, has been much used in the discussion of this problem. But what is the alternative method which can be employed, if one renounces the use of protective quantitative restrictions without prior approval? Subsidies? State-trading? The balance, to our mind, is heavily in favour of rich countries which can resort to subsidies and which can increase the amount of their subsidy to match every effort on the part of the foreign supplier to lower the price of his product. Poverty, it is truly said, is no crime: but it is twice as bad.

The third objection would have been valid if no procedure for subsequent scrutiny had been laid down. The Amendment proposed by us provides two safeguards against this difficulty. In the first place, it lays down certain criteria which each country must apply before it can grant protection in the form of quantitative restrictions.

I refer to paragraph 1 of the amendment which runs as follows:-

"Members agree that they will not impose new or intensify existing quantitative restrictions on imports for protective
purposes except when such restrictions are not more restrictive in their effect than other forms of protection permissible under this Charter."

If prior approval is considered unnecessary in the case of quantitative restrictions for balance of payment reasons, because criteria have been laid down in the latter case, we do not see why prior approval should be insisted on in the case of protective quantitative restrictions, even when definite criteria have been laid down. Quantitative restrictions imposed for balance of payments reasons can be used for protective purposes (and have, indeed, had that effect during the war) just as much as protective quantitative restrictions. It is easy to exaggerate the degree of urgency involved in the case of balance of payments quantitative restrictions; surely, balance of payment difficulties do not develop overnight.

Secondly, our Amendment lays down a definite procedure for subsequent scrutiny. It provides that if the Organisation disapproves of quantitative restrictions imposed by a Member, the Member must withdraw them or face the penalties imposed by the Organisation. This procedure would be written into the Charter, and any domestic industry which secured protection in the form of quantitative restrictions would know definitely that the protection given to it was subject to the subsequent approval of the Organisation. No vested interest could be created if protection were given subject to this definite condition. If necessary, a procedure could be laid down requiring every Member using protective quantitative restrictions to make this condition known to the interests concerned, and that would provide a complete answer to the objection that quantitative restrictions without prior approval would create vested interests.

The fourth objection has been fully met by the proviso to paragraph 1 of our Amendment. Where is the equity in laying down the same procedure for waiving a negotiated obligation and for permission to use a recognised instrument of economic development?

As I have said already, Mr. Chairman, the Amendment possesses two features which would restrict the use of quantitative restrictions without prior approval to very narrow limits, and to really essential cases, the two features being:

(1) The criterion laid down in paragraph 1, and its proviso; and
(2) The procedure laid down in paragraphs 2 and 3.

Let me instance a few cases, where, in the light of the criterion laid down, quantitative restrictions could be used without prior approval.

(a) Where the domestic industry is able to supply only a small proportion of domestic requirements. To put a tariff on the whole of the requirements would be to impose an excessively heavy burden on the consumer.
(b) Where, because of the smallness of the domestic output, no representative figures of cost are available. The Tariff has to be based on a comparison between domestic costs and import costs. If the level of protective import duty were based on the necessarily high and therefore unrepresentative cost of domestic production, it would necessarily have to be a high duty.

(c) In certain cases the import prices might be extremely unstable, and if protection could be given only by means of tariffs, the level of duty would have to be high enough to provide against all contingencies. The burden on the consumer and on international trade would in such a case be higher than if quantitative restrictions were employed, because quantitative restrictions are essentially more flexible.

(d) In certain cases, again, a tariff, by raising the price, would merely result in contraction of trade. A case in point in my own country is sulphate of ammonia, for which the poverty-stricken agricultural community provides the sole market. If, in such a case, it is not practicable to give subsidies, a pooling arrangement will have to be introduced to make supplies available to agriculturists at a price which represents the average of the import prices and domestic costs, and a pooling arrangement of this sort cannot be operated without quantitative restrictions.

(e) In the case of industries, the development of which is absolutely essential in the interests of national security (and it is not difficult, without much controversy, to categorise such industries, either here or by the Organisation), the rule about limiting the quantum of protection has to be modified somewhat. Quantitative restrictions, because of their certainty, could be permitted to be employed in the case of such industries to a greater extent than in other cases.

Having said this, Mr. Chairman, I should like to say that we would be quite prepared, if prior approval is waived under the limited circumstances we have indicated,

(a) to consider what amplification is possible in the criteria which have been laid down; and

(b) also to consider improvements in the procedure suggested by us.

I have already indicated that in addition to the safeguards already provided:

(1) Quantitative restrictions could conceivably be made subject to negotiation;

(2) That categories of security industries could be prescribed either now or later; and

(3) That a Member granting protection in the form of quantitative restrictions could be required to explain to the interest concerned that its action was subject to the approval of the Organisation, in order that no plea of vested interests
might be preferred if the Organisation subsequently disapproved of the action. In addition, it is also possible to lay down that in making any determination under para.1 of our Amendment, the Member should be guided by the findings of an independent national tribunal.

The Indian Delegation has presented only a few Amendments for consideration by this Conference, and of those we have put in my Government attaches the greatest importance to the one relating to quantitative restrictions. We come to you with clean hands. Only on one occasion before the war did we find it necessary to impose quotas; that was done against Japan, and by agreement. We are fully aware of the objections to quantitative restrictions, and of the risk of its being misused. None the less, we are convinced that if we are to carry out our programme of economic development we must have a residuum of power to impose quantitative restrictions under internationally accepted criteria in certain conditions. We are fully prepared to discuss what these criteria shall be, and are anxious to be as accommodating as we can. But we find it difficult to compromise with the principle itself, and I earnestly hope the Commission will, despite the hard things that have been said against quantitative restrictions, take into favourable consideration the Amendment we have proposed.