

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

JOINT SUB-COMMITTEE OF COMMITTEES II AND III ON TARIFF PREFERENCES

REPORT TO COMMITTEE II ON ARTICLE 15

PART I

1. The Joint Sub-Committee of Committees II and III was established with the following terms of reference:

"To consider and submit recommendations to both Committees regarding Articles 15, 16 (2) and (3) and 42 and the relevant proposals and amendments submitted in relation thereto with a view to finding a solution of the question of new preferential arrangements, including those for purposes of economic development and reconstruction, and of the maintenance of existing preferences as an exception from the most-favoured-nation clause."

2. The Joint Sub-Committee consisted of representatives of the following delegations: Argentina, Belgium, Brazil, Canada, Chile, El Salvador, France, Haiti, Iran, Poland, Sweden, Syria, Turkey, United Kingdom, United States and Venezuela.

3. Mr. Stig SAHLIN (Sweden) was elected Chairman. At the eleventh meeting, Mr. Jean ROYER (France) was elected in the place of Mr. Sahlin who had left Havana.

4. The Sub-Committee held fourteen meetings. At the tenth meeting, it was decided to set up a Working Party, consisting of representatives of Belgium, Chile, France, Syria, United Kingdom, United States and Venezuela. The Working Party held twenty-nine meetings, under the Chairmanship of Mr. Royer, and its Report to the Sub-Committee is contained in document E/CONF.2/C.2&3/A/14.

5. The Working Party made substantial progress in drafting a revised text of Article 15. Certain major points of difference were, however, taken up by the Co-ordinating Committee whose proposals were endorsed by the Heads of Delegations. Acting on the basis of these recommendations, the Sub-Committee submits the text of Article 15 annexed to this Report. In doing so, it wishes to emphasize that in its consideration of the text received from the Co-ordinating Committee, it has confined itself to matters of drafting and clarification and, in accordance with the recommendation of Heads of

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Delegations, has made no changes of substance. Support of the present compromise text by members of the Sub-Committee does not mean that they entirely agree with it, but only that they are willing to approve the text as a whole in order to reach the general settlement recommended by the Heads of Delegations.

6. The recommendations of the Sub-Committee in regard to Articles 16 and 42 are contained in its Report to Committee III. (document E/CONF.2/C.3/78).

7. Part II of this Report contains a brief statement on the main changes in the Geneva text of Article 15 and on the manner in which the Sub-Committee dealt with the proposed amendments listed below:

Paragraph Number (Geneva Text)	Country	Symbol of Document Originally Submitted E/CONF.2	Pages of Revised Annotated Agenda (E/CONF.2/C.2/9)
1	Argentina	11/Add.3	61
1	Chile	C.2/6/Add.4	61
1	Venezuela	C.2/6/Add.18	61
Additional	Chile	C.2/6/Add.4	61
2	Chile	C.2/6/Add.4	62
2	Argentina	11/Add.3	62
2	Venezuela	C.2/6/Add.18	63
4 (d)*	Poland	/50	-

(The amendment to paragraph 1 of the Geneva Text proposed by the delegation of Ecuador (page 61 of E/CONF.2/C.2/9) had been withdrawn at the ninth meeting of Committee II).

\* Text of Co-ordinating Committee.

#### PART II

8. The main change in Article 15, originating in a proposal by the Polish delegate, is the introduction of specific "conditions and requirements" relating to proposed new preferential agreements. If the Organization finds that a proposed agreement fulfils these conditions and requirements, its approval of it will in effect be automatic, provided only that the Organization also finds that the agreement is unlikely to injure substantially the external trade of Members not parties to it; moreover, even if substantial injury is

/found to be

found to be likely, provision is made for negotiation and compensation, so that under certain specified conditions the Organization shall nevertheless approve the agreement. As a result of this elaboration of Article 15, it has been possible to confine the more stringent procedure of prior approval, set out in the second sentence of paragraph 1 of the Geneva text, to new preferential agreements which do not conform to the above-mentioned conditions and requirements. It is felt that the introduction of procedure for automatic approval partly covers proposals by Chile (C.2/9, page 62) and Venezuela (C.2/9, page 63). The delegation of Brazil withdrew its reservation, (C.2/9, page 63) on condition that the recommendations of the Heads of Delegations are accepted as a whole. Proposals by Argentina (C.2/9, pages 61 and 62) relating to the powers of the Organization were not accepted, and the delegation of Argentina reserved its position as it considered that sovereign powers should not be placed in the hands of an international organization. The delegations of Haiti and Turkey reserved their positions on the whole Article pending decisions on Article 16. The delegation of Chile maintained the reservation on the whole Article which it had put on record at the meeting of Heads of Delegations.

Paragraph 1

9. Paragraph 1 of the new text consists only of the first sentence of paragraph 1 in the Geneva Text, which remains substantially unchanged. An interpretative note has been added to make it clear that the special circumstances mentioned are those referred to in the Article itself.

Paragraph 2

10. Paragraph 2, regarding notification, is substantially the same as the first sentence of paragraph 2 in the Geneva text.

Paragraph 3

11. Paragraph 3 contains the substance of the second sentence of paragraph 1 of the Geneva text, but now in effect applies only to new preferential agreements which do not fulfil the conditions and requirements of paragraph 4. Proposals by Argentina, Chile and Venezuela (C.2/9, page 61) to delete this sentence in the Geneva Text were not accepted.

Paragraph 4

12. Paragraph 4 is entirely new, and states the conditions and requirements determining the Organization's approval of a proposed new preferential agreement. It is thought that these new provisions go some way to meet the proposal by Chile (C.2/9, page 61) for a new paragraph designed to permit preferential arrangements between adjacent underdeveloped countries.

13. A proposal was considered to delete the words "between Members" from the  
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preamble, it being argued that this limitation had been introduced without adequate discussion. It was the view of the Sub-Committee, however, that the words should remain. The delegates of Argentina, Chile, Poland, Syria and Venezuela wished it put on record that in their view no final decision should be taken on this point until a definitive text of Article 93 was available, and the delegate of Argentina reserved his position.

14. The delegate of the United Kingdom entered a formal reservation on sub-paragraph (a) and the interpretative note pending instructions from his government.

15. The delegate of Poland presented an amendment (E/CONF.2/50) to sub-paragraph (d) designed to permit compensatory tariff preferences on products not conforming to the development and reconstruction criteria of sub-paragraph (b), subject to progressive elimination and limits as to duration and margins of preference. The Sub-Committee could accept neither this proposal nor an alternative proposal by the delegate of Argentina to insert a text previously discussed by the Working Party. The delegates of Argentina, Chile and Poland asked for their view to be recorded that rejection of these proposals would make the introduction of new preferential arrangements very difficult, if not impossible.

Paragraph 5

16. Paragraph 5 is a new provision by which the Organization may require a reduction in an unbound most-favoured-nation rate of duty on a product covered by a proposed preferential agreement, if, on appeal by an affected Member, it considers the rate to be excessive. A number of delegates would have preferred greater clarity in this paragraph, but, taking into account the recommendations of the Heads of Delegations, the Sub-Committee was unable to draft a clearer text which would have been acceptable to all its members.

Paragraph 6

17. Paragraph 6 provides for approval by the Organization within two months if it finds that an agreement fulfils the conditions of paragraph 4 and would not injure substantially the external trade of other Members. Moreover, conditions are laid down in regard to compensation for injured Members, etc.

18. In regard to the compensation provided for in sub-paragraph (b), it is understood that this may be of either a negative or positive character; that is to say, the Organization, may, in appropriate circumstances, allow compensation to take the form of withdrawal of concessions by an injured Member, and not merely of the establishment of new concessions in favour of the latter.

19. Provision is made regarding existing agreements, such as those deriving  
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from the Treaty of Lausanne, entitling Members to depart from most-favoured-nation treatment for the purpose of establishing regional preferences. An interpretative note has also been added in regard to rights to conclude preferential agreements which may have been recognized in respect of mandated territories which became independent before 21 November 1947.

In regard to sub-paragraph (d), the delegate of Iraq (not a member of the Sub-Committee) proposed that the provision relating to substantial injury should be limited to Members which, in their most-favoured-nation treaties with the parties to the agreement, have not recognized the right in question to depart from most-favoured-nation treatment. The sense of the Sub-Committee was against this proposal; therefore the delegates of Iraq and Syria reserved their right to reopen the question in Committee. The word "procedure" agreed by the Co-ordinating Committee in the last sentence of this sub-paragraph, has been changed to "provisions" in order to make it clear that sub-paragraph (d) is not subject to the provisions of sub-paragraph (c).

/ANNEX

ANNEX

ARTICLE 15

PREFERENTIAL ARRANGEMENTS FOR ECONOMIC DEVELOPMENT AND RECONSTRUCTION

1. The Members recognize that special circumstances, including the need for economic development or reconstruction, may justify new preferential agreements between two or more countries in the interest of the programmes of economic development or reconstruction of one or more of them.
2. Any Member or Members contemplating the conclusion of such an agreement shall communicate their intention to the Organization and provide it with the relevant information to enable it to consider the contemplated agreement. The Organization shall promptly communicate such information to all Members.
3. The Organization shall examine the proposal and, subject to such conditions as it may impose, may, by a two-thirds majority of the Members present and voting, grant an exception to the provisions of Article 16 to permit the proposed arrangements to be made.
4. Notwithstanding the provisions of paragraph 3, the Organization shall permit the necessary departure from the provisions of Article 16, in accordance with the provisions of paragraphs 5 and 6, in respect of a proposed agreement between Members for the establishment of tariff preferences which it determines to fulfil the following conditions and requirements:
  - (a) the territories of the parties to the agreement shall be contiguous, one with another, or all parties shall belong to the same economic region;
  - (b) any tariff preference provided for in the agreement is necessary to ensure a sound and adequate market for a branch of industry or agriculture which is being or is to be created or reconstructed or substantially developed or substantially modernized;
  - (c) the parties to the agreement undertake to grant free entry for the product or products of the branch of industry or agriculture referred to in sub-paragraph (b) or to apply to such products custom duties sufficiently low to ensure that the objectives provided for in sub-paragraph (b) shall be achieved;
  - (d) any compensation granted to the other parties by the party receiving preferential treatment shall, if it is a preferential concession, conform with the provisions of this paragraph;

/(e) the agreement

(e) the agreement contains provisions permitting the adherence of other Members, which are able to qualify as parties to the agreement under the provisions of this paragraph, in the interest of their programmes of economic development or reconstruction on terms and conditions to be determined by negotiation with the parties to the agreement. The provisions of Chapter VIII may be invoked by such a Member in this respect only on the ground that it has been unjustifiably excluded from participation in such an agreement;

(f) the agreement contains provisions for its termination according to its purposes and within a period necessary for the fulfilment of such purposes but in any case not more than ten years, provided that any renewal shall be subject to the approval of the Organization and shall not be for periods greater than five years each.

5. When the Organization, upon the application of a Member, approves a margin of preference in accordance with paragraph C, as an exception to Article 16 in respect of the products covered by the proposed agreement, it may, as a condition of its approval, require a reduction in an unbound most-favoured-nation rate of duty proposed by the Member in respect of any product so covered, if in the light of the representations of any affected Member it considers that rate excessive.

6. (a) If the Organization finds that the contemplated agreement fulfills the conditions set forth in paragraph 4 and that the conclusion of the agreement is not likely to cause substantial injury to the external trade of a Member not party to the agreement, it shall within two months authorize the parties to the agreement to depart from the provisions of Article 16 as regards the products covered by the agreement. If the Organization does not give a ruling within the specified period, the authorization of the Organization shall be considered automatically received.

(b) If the Organization finds that the agreement, while fulfilling the conditions set forth in paragraph 4, is likely to cause substantial injury to the external trade of a Member not party to the agreement, the Organization shall inform interested Members of its finding and shall require the Members contemplating the agreement to enter into

/negotiation

negotiations with that Member. When agreement is reached in the negotiations, the Organization shall authorize the Members contemplating the preferential agreement to depart from the provisions of Article 16 as regards the products covered by the preferential agreement. If, within two months from the date on which the Organization suggested such negotiations, the negotiations have failed and the Organization considers that the injured Member is unreasonably preventing the conclusion of the negotiations it shall permit the necessary departure from the provisions of Article 16 by fixing a fair compensation to be granted by the parties to the agreement to the injured Member or, if this is not possible or reasonable, by ordering such modification of the agreement as will give such Member fair treatment. The provisions of Chapter VIII may be invoked by such Member only if it does not accept the decision of the Organization regarding such compensation.

(c) If the Organization finds that the agreement while fulfilling the conditions set forth in paragraph 4 is likely to jeopardize seriously the economic position of a Member in world trade, it shall not agree to any departure from the provisions of Article 16 unless the parties to the agreement have reached a mutually satisfactory understanding with that Member.

(d) If the Organization finds that the prospective parties to a regional preferential agreement have, before 21 November 1947, obtained from countries representing at least two-thirds of their import trade, the right to depart from most-favoured-nation treatment in the cases envisaged in the agreement, the Organization shall, without prejudice to the conditions governing such recognition, grant the authorization provided for in paragraph 5 and in sub-paragraph (a) of this paragraph, provided that the conditions set out in sub-paragraphs (a), (e) and (f) of paragraph 4 are fulfilled. Nevertheless, if the Organization finds that the external trade of one or more Members, which have not recognized this right to depart from most-favoured-nation treatment, is threatened with substantial injury, it shall invite the parties to the agreement to enter into negotiations with the injured Member;

/and the procedure

and the procedure of sub-paragraph (b) above shall apply.

INTERPRETATIVE NOTES

Paragraph 1

It is understood that the special circumstances mentioned in paragraph 1 are those referred to in Article 15 itself.

Paragraph 4 (a)

The Organization need not interpret the term "economic region" to require close geographical proximity if it is satisfied that a sufficient degree of economic integration exists between the countries concerned.

Paragraph 6 (d)

It is understood that the words "have, before 21 November 1947, obtained from countries representing at least two-thirds of their import trade, the right to depart from most-favoured-nation treatment for the purpose of establishing regional preferences as envisaged in the agreement" cover rights to conclude preferential agreements which may have been recognized in respect of mandated territories which became independent before 21 November 1947, in so far as these rights have not been specifically denounced before that date.

CONSEQUENTIAL AMENDMENT OF ARTICLE 13

Insert in paragraph 2 (a) of Article 13, after the word "reconstruction" in the second line, "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".

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