

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL

NATIONS UNIES  
CONSEIL  
ECONOMIQUE  
ET SOCIAL

RESTRICTED  
E/PC/T/W/175  
6 June, 1947  
ORIGINAL : ENGLISH

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.

CHAPTER V.

Annotated Agenda prepared by the Secretariat for  
discussion of Articles 34, 35, 36 and 38.

This Agenda supersedes the relevant parts of document E/PC/T/W.64 and should be read in conjunction with the Report of the Drafting Committee (E/PC/T/34) hereafter referred to as "D.C. Report". This Agenda incorporates the proposals reported to the Secretariat by delegations up to and including 5th June 1947, as set forth in the following E/PC/T documents:

<u>Proposed by the Delegations of:</u>	<u>Document</u>
Australia . . . . .	W.170
Belgium . . . . .	W.167
Chile . . . . .	W.173
Cuba . . . . .	W.172
Czechoslovakia . . . . .	W.171
France . . . . .	W.168 & 169
United Kingdom . . . . .	W.161 & 163
United States . . . . .	W.165

Chapter V - General Commercial Policy.

Section F. Emergency Provisions - Consultation

Article 34. Emergency Action on Imports of Particular Products.

Paragraph 1.

1. The Belgian Delegation proposes that the words in brackets, lines 8 - 14, be deleted (W.167). The following is given as the reason for this proposal:

"Article 34 provides an escape clause the importance of which should not be underestimated. The words enclosed in brackets greatly enlarge its scope to the sole advantage of producers in a territory receiving the benefits of a preferential system."

2. The United Kingdom Delegation proposes that the words "at the request of such producers' Government" be inserted after "preference" in line 14 (W.163).

3. The United States Delegation suggests the following changes (W.165):

(a) The insertion after "free" in line 15 of the words "in respect of such product, and to the extent and for such time as may be necessary to prevent such injury."

(b) The deletion of the words "in respect of such product" in lines 15 and 16.

(c) The deletion of the comma after the word "part" in line 16.

(d) The deletion of all the words after "concession" in line 17.

4. If the last sentence is retained the insertion of the words "or remove" in the last line after the word "prevent" may be considered.

Paragraph 2.

1. The three delegates who maintained their views that action should not be permitted without prior consultation represented Canada, Chile and Cuba (D.C. Report, page 29).

2. The delegate for Canada also maintained that if action without prior consultation was permissible, immediate counter-action should also be permitted (D.C. Report, pages 29-30).

3. The Belgian Delegation proposed (W.167):

(a) To add the following to the first sentence:  
"Such written notice must specify which producers are injured or likely to be injured and the territories in which they are located."

- (b) To add the following at the end of the paragraph "and provided that notice in writing is given of the producers injured or likely to be injured and the territories in which they are located".

The Belgian Delegation gives the following explanation:

"The written notice should make clear the reasons for the adoption of such action so that Members have in their possession all the data necessary to form an opinion and determine their policy.

Further, if the words enclosed in brackets in paragraph 1 are retained, States affected must know which are the territories on whose behalf emergency action is being taken so that they may be able to take counter-measures equivalent to the additional privileges granted by paragraph 1."

### Paragraph 3

1. The Belgian Delegation propose to add after the words "taking such action" in the 12th line, the words "and of the States within whose territory the producers injured or likely to be injured are located" (W.167).

The Belgian Delegation states that this addition will not be necessary if the words in brackets in paragraph 1 are deleted.

2. The United Kingdom Delegation suggest that in line 12 after "the Member taking such action" the following should be inserted "or, in the case of a Member at whose request action has been taken by another Member in connexion with a preference, the trade of the Member making that request". (W.163).

3. The United States Delegation suggest the deletion of the words "substantially equivalent" in lines 12 and 13 and the deletion of the last sentence (W.165).

The United States Delegation makes the following comment:

"The proposed amendment would leave to the Organization the decision as to what compensatory action would be appropriate in the circumstances without envisaging, as does the present draft, that the privileges of the Article will be abused".

### Article 35 - Consultation - Nullification or Impairment.

1. The French Delegation propose that the title should be altered to read "Procedure for Consultation" (W.168).

2. The Cuban Delegation propose that this Article should be deleted and submit the following suggestions (W.172).

"The existing formulation of paragraph 1 deals exclusively with the questions of Chapter V, but it seems undesirable to limit the possibility of an amicable settlement of misunderstandings or disputes to this Chapter. The new Article 85 A proposed below would extend this procedure to the whole Charter."

"Article 85A.

Add a new Article 85 A reading as follows:

"Paragraph 1.

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding such representations as may be made by any other Member with respect to matters affecting the operation of the Charter, and shall in the course of such consultation provide the other Member with such information as will enable a full and fair appraisal of the situation which is the subject of such representations".

"Paragraph 2.

The same wording as the present Article 35, paragraph 2, substituting in the third sentence of this paragraph the word "Chapter" by the word "Charter".

"Article 86.

- a) In paragraph 2, line 3, substitute the word "shall" by the word "may".
- b) Add, as a last sentence, to paragraph 2, the following: "The application of the procedure in Article 85 A does not exclude the initiation of the procedure set forth in this paragraph, as far as it is applicable to the case, provided the first mentioned procedure has been terminated".

"Article 86 A

Add, as a new Article 86 A, paragraphs 3 and 4 of the present Article 86.

Comment to Nos. 3 and 4 - These proposals are designed to regroup the remedies created by the Charter for settling, either amicably or, by a legal procedure, questions or disputes arising out of the wording or the application of the Charter, or which may develop by actions directed against the purposes of the Charter or situations having the effect of nullifying or impairing its objects.

The amendment is intended, furthermore, to avoid a multiplication of the procedures provided for".

Paragraph 1

1. The delegate reserving his position temporarily regarding the words "anti-dumping and countervailing duties" inserted by the Drafting Committee (cf. D.C. Report, page 30), represented Brazil.
2. The delegate supporting the suggestion (made by several other delegates) to insert the words "without prejudicing the legitimate business interests of particular private or state enterprises" represented Czechoslovakia.
3. The delegate supporting the remarks made by the delegate for Czechoslovakia and declaring that if the words mentioned were not included, he would prefer restoration of the London text, represented France.

Paragraph 2.

1. The French Delegation propose that this paragraph should be deleted and should be replaced by a new Article in Chapter VIII, the text of which will be proposed in due course (W/168).
2. The Australian Delegation propose the following to replace the present draft (W/170).

"2(a) If any Member should consider that any other Member is applying any measure, whether or not it conflicts with the terms of this Charter, or that any situation exists, which has the effect of nullifying or impairing any object of this Charter, the Member or Members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter."

any benefit accorded to it directly or indirectly by this Charter is being nullified or impaired, or that the promotion by it of any of the Purposes of this Charter is being impeded, as the result of -

(i) the application by another Member of any measure, whether or not it conflicts with the provisions of this Charter; or

(ii) the failure of another Member to carry out its obligations under this Charter; or

(iii) the existence of any other situation.

the Member may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other Member or Members which it considers to be concerned. Any Member thus approached shall give sympathetic consideration to the representations or proposals made to it.

"If no such adjustment can be effected, the matter may be referred to the Organisation, which shall, after investigation, and if necessary after consultation with the Economic and Social Council or the United Nations and any appropriate inter-governmental organisations, make appropriate recommendations to the Members concerned."

"If no satisfactory adjustment is effected between the Members concerned within a reasonable time, or if the difficulty is of the type described in (iii) of this subparagraph, the matter may be referred to the Organisation.

"(b) The Organisation shall promptly investigate any matter so referred to it, and after consultation if necessary with Members, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organisations, shall make appropriate recommendations to the Members concerned.

"[The Organisation, if it considers the case]

"(c) If the Organisation considers that the circumstances are serious enough to justify such action, it may authorise a Member or Members to suspend the application to [any/such] other Member or Members of such [specified/obligations or concessions under this Chapter as the Organisation determines to be [may be] appropriate in the circumstances.

"If the application to any Member of any [if such] obligation/s/ or concession/s/is [are/in fact suspended that [any affected/Member shall then be free, not later than sixty days after such action is taken to advise the Director-General in writing of its intention to withdraw from the Organisation and such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the [Organisation/ Director-General."

The Australian Delegation state that the main purposes sought in this re-drafting are:-

- "(1) to replace the phrase "nullifying or impairing any object of this Charter" by words that more clearly express the intention and are less ambiguous, it being felt that reliance upon the phrase "object of this Charter", as at present, leaves too much to inference;
- "(2) to set out more clearly the circumstances in which a Member may make a complaint and seek to be released from obligations undertaken or concessions granted by it;
- "(3) to provide for the fact that in some cases a complaining Member's difficulties might not be due to any act or failure of another Member to whom complaint could appropriately be made, while retaining the provision that when another Member is clearly involved, consultation and conciliation between the Members should be attempted before the matter is referred to the Organisation;
- "(4) to ensure that the drafting of the Article covers the types of cases described in paragraphs 4(b) and 4(c) on page 11, and 3(1) on page 15 of the London Report;

"(5) to retain the idea that it is the Organisation which determines, in the circumstances, the obligations from which one or more Members may be released, and which Members should be released;

"(6) to clarify the procedure under which a Member may withdraw from the Organisation in the circumstances set out in this Article, and to use similar language to Article 89."

3. The United Kingdom Delegation propose that this paragraph should be transferred to Article 86 and have suggested the following combined redraft of Articles 35:2 and 86 (W.161);

"1. Nothing in this Article shall be construed to limit or exclude other procedures established in this Charter for consultation over and settlement of complaints or difficulties arising out of its operation.

"2. If any Member considers that another Member has adopted any measure, whether or not it constitutes a breach of an obligation under this Charter, or that any situation has arisen, which has the effect of nullifying or impairing any object of this Charter, it may invite the Members concerned to consult thereon and they shall endeavour to reach a satisfactory settlement.

"3. If no such settlement can be reached, the matter may be referred by an interested Member to the Executive Board, which shall give a ruling thereon.

"4. Any ruling of the Executive Board shall be reviewed by the Conference at the request of any interested Member. Upon such request the Conference shall by resolution of the majority confirm or amend or reverse the ruling, provided that

(i) it may, as appropriate, consult with the Economic and Social Council of the United Nations and with any other interested inter-governmental organisations; and

(ii) if the matter involves a dispute as to the interpretation of the Charter, it shall at the instance of not less than one-third of the Members request from the International Court of Justice an advisory opinion thereon and any proceedings for the review by the Conference of such a ruling of the Board shall thereupon be stayed until the opinion of the Court is delivered, and the Conference, when it finally reviews such ruling shall adopt and be bound by the advisory opinion delivered by the Court. The Conference after reviewing the ruling may make such further recommendations to the Members concerned as it thinks fit.

"5. If it considers, in any case brought before it in pursuance of this Article, that a breach of obligations under this Charter or that nullification or impairment of any object of this Charter has taken place of a character serious enough to justify such action, the Conference may authorise any Member or Members to suspend the application to any other Member or Members of such obligations or concessions under the Charter as it may specify. If such obligations or concessions are, in fact, suspended, any affected Member shall then be free to give notice of withdrawal from the Organisation. Such notice must be given to the Organisation in writing and within 60 days after such action is taken, and the Member's withdrawal shall become effective 60 days after the receipt by the Organisation of the said notice.

"6. The Executive Board and the Conference shall respectively make rules of procedure for giving effect to this Article."

4. Secretariat note: If this paragraph is retained, it might be appropriate to replace in the first line the words "should consider" by "considers"; also, the expression "any object of this Charter" in line 6 might read "any purpose of this Charter" to conform with Article 1 and paragraph (d) of Article 61.

SECTION G - RELATIONS WITH NON-MEMBERS

Article 36 - Contractual Relations with Non-Members.  
Treatment of the Trade of Non-Members.

1. Note (a) to Article 46, on page 38 of the D.C. Report, suggests that when Article 36 is dealt with, the provisions of Chapter VII, which would allow non-Members to participate in commodity arrangements, will need to be taken into consideration.
2. The Text of this Article as given in the United States Draft Charter was left for consideration at a later stage (cf. D.C. Report, page 30). The United States Delegation has now provided a new draft as follows (W.165).

NOTE: The additions and deletions are based upon the text of this Article in the U.S. draft charter, as adopted as a basis of discussion in the first meeting of the Preparatory Committee and as reproduced on page 31 of the Report of the Drafting Committee.

- "1. No Member shall seek exclusive or preferential advantages for its trade in the territory of any non-Member which would so as to result, directly or indirectly, in discrimination in that territory against the trade of any other Member the application by such non-Member to any Member of measures which, if applied by a Member, would be inconsistent with the provisions of this Charter. (1)
- "2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member shall/would be contractually entitled to any of the benefits of provided to Members by virtue of this Charter/ Chapter V. (2)
- "3. With regard to countries which, although eligible for membership have not become Members or have withdrawn from the Organization. No Member shall, except with the concurrence of the Organization, apply to the trade of such countries/ any other country which, although eligible for membership, has not become a Member or has withdrawn from the Organization, the tariff reductions effected by such Member pursuant to Article 24. (3) This paragraph shall become effective upon the expiration of one year from the date on which the Organization is established: Provided, That this period may be extended by the Organization for further periods not to exceed six months each/ (4)
- "4. The provisions of paragraphs 2 and 3 of this Article shall become effective upon the expiration of one year from the day on which this Charter enters into force: Provided, That this period may be extended by the Organization, in respect of the relations of any Member with any non-Member, for such further periods as the Organization may prescribe. At any time before the expiration

of any such period, a Member may request the Organization in writing for such an extension, in which event the period will be considered to be extended until a reply is received from the Organization. If the Organization disapproves the extension requested, the Member shall then be free, not later than sixty days from the day on which notice of such disapproval is received by the Member, to withdraw from the Organization effective upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. (5)

- "4/5. Members undertake to review shall terminate at the earliest possible date any international obligations they may have with non-Members which would prevent them from giving full effect to paragraphs 1 and 2 of this Article/ the provisions of this Charter, and, if necessary for that purpose, to terminate such obligations/ either by agreement or in accordance with their terms. (6)"

The United States proposals are supported by the following commentary:

- "(1) Under the present draft this obligation might have been interpreted to refer to ordinary commercial contracts or other matters not subject to the provisions of the Charter. The proposed change should make the original purpose clear.
- "(2) The proposed change limits the application of this provision to the principal commercial benefits which are granted by Members to other Members by virtue of the Charter. The broader wording of the earlier draft was subject to the objection that it would require the renegotiation or renunciation of agreements with non-Members even though such agreements could not be considered harmful to the interests of other Members.
- "(3) This change is made in the interest of better drafting and does not affect the substance of the earlier draft.
- "(4) The deleted sentence has been moved to the new paragraph 4.
- "(5) The purpose of this change is:
- a. To provide a mechanism for the extension of the period before which the provisions of paragraphs 2 and 3 come into force, and
  - b. to enable Members to appraise the effects

of the application of paragraphs 2 and 3 in the light of the known membership of the Organization and to withdraw from membership if the disadvantages to them arising from the application of this Article would outweigh the advantages of membership.

- "(6) The effect of the changes proposed in this paragraph is to omit from an Article relating to non-Members any reference to the revision of obligations between Members, to extend the termination of obligations with non-Members to include any obligation conflicting with the Charter, and to avoid unnecessary delays in carrying out the provisions of the paragraph."

3. The Czechoslovak Delegation proposes the following text (W.171):

- "(1) No Member shall seek exclusive or preferential advantages for its trade in the territory of any non-Member.
- (2) No Member shall be a party to any agreement or other arrangement with any non-Member which would be contrary to the general purposes of the Charter.
- (3) Each Member undertakes to take appropriate measures in accordance with its laws and economic and social organization to prevent transactions with non-Member or with persons on their territories which would be contrary to the general purposes of the Charter.
- (4) Any Member shall be entitled to suspend the application of some provisions of this Charter if a substantial proportion of its foreign trade is conducted with non-Members and if the execution of some provisions of the Charter would seriously prejudice its economic interests, provided that such action shall not be contradictory to the general purposes of the Charter.

Any Member who has taken such action shall afford the Organization and substantially interested Members an adequate opportunity to consult with it in respect of its action and of the best way which would enable the Member concerned to safeguard its interests without prejudicing the general purposes of this Charter and the legitimate interests of the above mentioned Members.

If no adjustment can be effected the Member concerned may withdraw from the Organization at any time by written notice addressed to the Director General either on its own behalf or on behalf of the territory which is at the time self-governing in respect of matters provided for by this Charter, giving reason therefore. This withdrawal shall become effective on the date such notice is received. The Director General shall immediately notify all other Members."

The Czechoslovak Delegation makes the following comment on its proposal:

"At its first Session the Preparatory Committee did not discuss Article 36 and no views were expressed as to its text. The Czechoslovak Delegation was from the very beginning greatly concerned about the consequences of the original draft text, because, if Article 36 would have been left standing in its original form, this might have led to serious economic conflicts, detrimental to all concerned and hence contrary to the purposes of the Charter. Such a possibility of future conflicts would have probably prevented many countries from joining the I.T.O.

The principles expressed in the suggested Amendment are analogous to the principles which underlie the relations of Members to non-Members in the Articles of Agreement of the International Monetary Fund / Article XI, XIV, Section 1/.

The expression "preferential advantages" used in paragraph 1 of the proposed Article 36 is understood in the sense of "tariff preferences" and should not be interpreted in the sense of preventing Members from obtaining normal tariff reductions in a non-Member country, if this country for some reason has no commercial treaty with one or more Member countries."

SECTION I - TERRITORIAL APPLICATION

Article 38 - Territorial Application of Chapter V -  
Frontier Traffic - Customs Unions

Paragraph 1

1. The International Monetary Fund may contribute to the discussion on the implications of this paragraph on Articles 26, 28 and 29 (cf. D.C. Report, page 32).

2. The United States Delegation propose that the word "interpreting" in line 7 be replaced by "the territorial application", in order that possible ambiguity in the former wording be removed (W. 165).

Paragraph 2 (b)

1. The amendment in respect of the initial transitional stage of the formation of a Customs Union (cf. D.C. Report, page 32) was proposed by the delegate for Chile, supported by the delegate for Lebanon. The Delegation of Chile has now proposed (W.173) that the following text should be inserted after "The formation of a Customs Union":

"and its initial transitional stage, which begins with the entry into force of an agreement establishing the effective commencement of a Customs Union and characterised by a total elimination of customs duties on certain products originating in the contracting countries".

2. The United Kingdom Delegation propose that the proviso beginning in the second line should be numbered "(1)", and that the following second proviso should be added (W.163):

"(2) where the countries which enter into the Union are territories which grant preferences as provided for in Article 14(2), the preferences granted by the Union to other territories which previously enjoyed preferences in any of the constituent territories of the Union shall not on the whole be higher than the average level of the preferences previously so granted."

Paragraph 3

The delegate suggesting that provision should be made for the continuation of his country's special arrangements with certain neighbouring islands (cf. D.C. Report, page 32) represented Australia.

Paragraph 4

1. The two delegates who maintained their reservations in respect of regional preferences represented Brazil and Lebanon. The delegates objecting to the application of paragraph 3 of Article 66 (cf. D.C. Report, page 32) represented Chile and Lebanon.

2. Attention is drawn to the new paragraph to Article 14 proposed by the delegates for Chile and Lebanon (cf. E/PC/T/W.27). The Preparatory Committee decided that this matter should not be considered in conjunction with Article 14. Reference should be made to the Chilean proposal referred to under paragraph 2(b) above.

3. It may be considered whether this paragraph (which is not concerned with territorial application) should not be placed elsewhere in the Charter.

4. The French Delegation makes the following comment (W.169):

"The French Delegation had intended to submit an amendment to Article 38, paragraph 4. However, as the Sub-Committee examining Article 13 of the Draft Charter is at present considering proposals which, if accepted, would alter the scope of Article 14 and of Article 38, paragraph 4, the French Delegation prefers to await the results of these discussions before making any definite proposals. In these circumstances, the French Delegation can only reserve the right to submit its observations when Article 38 comes up for discussion.

Paragraph 5

No observation.