

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

COMMITTEE II

SUB-COMMITTEE ON PROCEDURES

4th Meeting  
held on 2 November 1946  
at 10.30 p.m.

Chairman: Mr. SPEEKENBRINK (Netherlands)

1. Introduction

The CHAIRMAN welcomed the presence of Dr. COOMBS, Chairman of Committee II.

2. Election of Rapporteur

The CHAIRMAN proposed that the Sub-Committee elect a Rapporteur, in accordance with the views expressed at the previous meeting.

Mr. HAWKINS (United States) proposed Mr. Leddy (United States).

The Sub-Committee elected Mr. LEDDY (United States) as Rapporteur, it being understood that he would be considered an expert official of the Sub-Committee, and that Mr. Hawkins (United States) would have no responsibility for the duties undertaken by Mr. Leddy in his capacity as Rapporteur.

3. Continuation of Discussion of Paragraph 2 of Article 8 of the Draft Charter. Exceptions to the application of Most-Favoured-Nation Treatment.

The CHAIRMAN reminded the Sub-Committee that they had left open the last sentence of paragraph 1 of Article 8, until the Rapporteur had prepared his report.

He proposed the continuation of the discussion of paragraph 2, beginning with the first sentence as far as the date "1 July 1939", which had caused considerable comment at the previous meeting.

He suggested that the Sub-Committee should keep in view pages 9 and 10 of the Summary circulated by the Secretariat on 27 October 1946.

Mr. SHACKLE (United Kingdom) recalled that he had already suggested that the date laid down in regard to the consideration of preferences, should be changed to the date of the Tariff Agreement to be concluded next year. It was unrealistic to choose a date as far back as 1 July 1939. The Meeting should consider preferences at present in force, and the effect which the coming agreement would have on such preferences.

Mr. LECUYER (France) pointed out that he had already explained why he preferred 1 July 1939; but he had no strong objection to other dates being used in the case of the countries.

Mr. VIDELA (Chile) seconded the United Kingdom Delegate's proposal, as it was in accordance with his own previous proposal.

Mr. ADARKAR (India) strongly supported the proposal that the date of the Agreement should be substituted for 1 July 1939.

Mr. HAWKINS (United States) thought that, if the date of Agreement was substituted for 1 July 1939, it would mean that any preference increased after 1 July 1939 would be bound to be used as a basis of negotiation for the agreements to be made next spring. He suggested that preferences increased or established since 1939 were in the nature of wartime measures, and would overweight the preference side of the balance in the coming negotiations. He did not however wish to treat the point as if it were an issue of major importance.

Mr. MCKINNON (Canada) enquired if the Sub-Committee was discussing document (E/FC/T/C.II/10), i.e. the amendment of paragraph 2 proposed by the United Kingdom Delegation.

He was prepared to discuss the proposed amendment; but he could not commit himself to any date at all, until he had consulted his Government.

Dr. COOMBS (Australia) pointed out that the Sub-Committee ought to know exactly what new preferences had been established. In Australia there had been no important change since 1939; but in the case of Canada preference margins had been greatly increased. The Sub-Committee should come to an understanding that the countries concerned should adopt dates, viz. either 1 July 1939, or the date of agreement, or an intermediate date, to serve as a fair basis for negotiation.

Mr. MCKINNON (Canada) agreed that the facts should be made known. Canada's two most important trade agreements were with the United Kingdom and the United States. During the war Canada had suspended entirely, or greatly reduced, preference rates for the United Kingdom. Canada had further suspended the operation of most-favoured-nation rates during the war. In neither case had these changes been rescinded. In view of the highly artificial position of Canadian tariffs in the last seven years, he refused to commit his country to any date. But he was prepared, after consultation with his Government, to say that Canada would probably wish to fix a date for the negotiation of agreements in regard to preferences at some period intermediate between the extreme dates of 1 July 1939 and the date of agreement. Further he pointed out that the phrase in the United Kingdom amendment "legislation in force" would raise very great legal difficulties, as some preferences had been established by Parliament and some by the Executive.

The CHAIRMAN pointed out that there were clearly two points of view. The French Delegate wished to retain the date 1 July 1939, since agreements made as a result of the war should not count. For example, the Netherlands and Belgium had removed all customs duties at the present moment, for the sake of furthering reconstruction, but would not wish to negotiate a Tariff Agreement on that basis. Secondly, the Delegates of the United Kingdom and Canada preferred the date of the Tariff Agreement. He therefore proposed that there should be a tariff truce until the conference on tariff agreements met and that

the date by which the subject of preferences should be negotiated should be laid down as 1 July 1939 or any date up to the date of agreement, provided that no important preference changes had been made during the war contrary to the principles contained in the Draft Charter.

Mr. ADARKAR (India) pointed out that not all preferences established since 1939 were the result of abnormal conditions due to the war. The arrangement India had made with Burma prior to the Japanese invasion was not due to the war but the result of Burma having previously formed part of India until 1937.

Mr. SHACKLE (United Kingdom) suggested that Dr. COOMBS' proposal could best be put into effect by adding the following clause at the end of sub-paragraph (b) of his amendment (E/FC/T/C.II/10) as follows: "or at any other date, which may be agreed between particular negotiating countries".

The CHAIRMAN stated that the customs union arrangement between the Netherlands and Belgium during the war should also be validated; that was why he had proposed the wording "not contrary to the principles contained in the Draft Charter".

Dr. ALAMILLA (Cuba) stated that there were three ways of making exceptions to preferences, (a) to restrict preferences to be considered to those in force before 1 July 1939 (b) to restrict preferences to be considered to those in force on 1 July 1946 provided such preferences had not been increased above the level of 1 July 1939 and (c) which he suggested as the most efficacious, to leave the date open until the agreement of tariff rates, and then not to take into account those which could be considered to have been established as a result of abnormal conditions due to the war, but to make a list of those which should be validated.

Mr. LECUYER (France) suggested that the United Kingdom draft might be accepted. That would eliminate the necessity of dealing with dates, which could be left as matter for negotiations.

Mr. SHACKLE (United Kingdom) explained that he was interested in having tariff schedules appended to the Charter. The result would be that modifications of preference would be safeguarded by agreement between the negotiating countries. There might have to be modification of the suggested paragraph to indicate that additional schedules were to be appended. It was a matter of drafting.

Mr. HAWKINS (United States) agreed with the Canadian Delegate that any date chosen for inclusion in the Article should be fixed on the basis of facts.

He had definite objection to the use of the effective date of the Charter, because it would permit increases in preferences for purposes of negotiation, i.e. "padding". In the case of using the date of Agreement the negotiators might be subject to public criticism.

He suggested that the Sub-Committee was seeking flexibility, and in so doing was possibly approaching a solution to the problem. He had attempted to make a draft on the lines of the United Kingdom suggestion, but had approached the problem from a different point of view.

He would prefer to retain the date of 1 July 1939 in the sentence, but to add "due account being taken by the countries concerned of special conditions arising out of exceptional wartime circumstances." (The wording was not definitive.) Difficulties would occur with any date used; but the matter was subject to agreement. The use of the United Kingdom formula plus a date would leave consideration of the bases of preferences to negotiation.

Mr. VIDELA (Chile) reminded the Sub-Committee that the Chilean proposal had still to be considered. Chile had agreements involving preferences with Peru (1941) and France (1946).

Mr. ALAMILLA (Cuba) stated that his remarks took particular account of the problem mentioned by the Chilean Delegate. That problem would be solved, if the effective date of the Charter were chosen.

Mr. MCKINNON (Canada) asked the meaning of the words "are limited" at the end of the first paragraph of the United Kingdom Delegation's alternative draft.

Mr. SHACKLE (United Kingdom) was prepared to accept the wording suggested by Mr. HAWKINS with the possible substitution of the words "due account being taken by the negotiating countries of special situations that have arisen since that date" for the words "due account being taken by the countries concerned of special conditions arising out of exceptional wartime circumstances."

Replying to the Canadian Delegate's inquiry, he said that his Delegation's draft implied a complete limitation of permitted preferences from every point of view.

Mr. MCKINNON (Canada) said that the words "are limited" might be interpreted to mean "shall not exceed". Since they referred to bound or fixed margins of preference, he would have to reserve his Government's position on paragraph (a).

Mr. SHACKLE (United Kingdom) said he would not be adverse to changing the words "are limited" to "shall not exceed" or "do not exceed", and to the removal of the word "to" before the words "the margins of preference" in both paragraphs (a) and (b).

In answer to a question by the Delegate for India, Mr. SHACKLE (United Kingdom) said that the question of date did not arise in paragraph (a).

Mr. ADARKAR (India) indicated that the paragraph would be acceptable to India.

Mr. HAWKINS (United States) reiterated that what the Sub-Committee was seeking was flexibility. The difficulties of

using any date were insuperable. He suggested leaving out the date in the United Kingdom formula, and using instead - his wording was again not definitive - the following phrase: "date to be that which may be agreed upon between the particular negotiating countries concerned." That seemed to avoid the difficulties which would arise from the use of a specific date.

He suggested the following alternative draft of paragraph (b) of the United Kingdom proposal:

"(b) in the case of all other items, the margins of preference in force in the territories concerned on the date agreed by both negotiating countries."

He suggested that a formula might be worked out by the Rapporteur after examination of all views expressed.

Mr. ALAMILLA (Cuba) suggested the deletion of certain clauses from paragraph 2 of the United States Draft Article and the insertion of the words "reduction of" after the words "to processes of". The paragraph would then read:

"2. The provisions of paragraph 1 of this Article shall not be construed to require the elimination of any preference in the rate of ordinary import customs duty which falls within the descriptions set forth in (a), (b) or (c), below, and shall be subject to processes of reduction or elimination pursuant to the provisions of Article 18."

Dr. COOMBS (Australia) suggested that the word "and" before "shall be subject" should be changed to "but".

Mr. VIDELA (Chile) agreed with the suggestion of the Cuban Delegate.

Mr. ARDARKAR (India) thought it would be better not to combine consideration of a redraft of paragraph 2 of the United States Draft Article with the question of including a date in the paragraph.

Mr. LECUYER (France) inquired whether a common date would be applicable to all exceptions, or whether a new date would be discussed in connection with each exception.

Mr. VIDELA (Chile) suggested that the use of the words "in force" in the Chilean proposal covered the date.

Mr. HAWKINS (United States) offered the following clause in substitution for the words "which does not exceed the preference in force in any member country on 1 July 1959":

"which does not exceed the preferences in force in any member country on dates to be agreed upon between countries concerned"

He hoped that would clarify the paragraph, and save further discussion on a point to which the Sub-Committee had devoted so much time.

Mr. ALAMILLA (Cuba) agreed to the suggested clause, but reminded the Sub-Committee that he wished the words "reduction or" to follow "to processes of" in the penultimate line of the paragraph. The words "reduction" and "elimination" appeared in Article 18, and should both be used in paragraph 2 of Article 3.

The CHAIRMAN pointed out that Article 18 reads "reduction of tariffs" and "elimination of preferences".

Mr. ADARKAR (India) was quite prepared to accept the formula stated by Mr. Hawkins (United States), but reserved his position on the eventual form of paragraph 2. If a date was mentioned, the advantages of flexibility under the United Kingdom draft would be lost. That draft offered greater advantages to India.

The CHAIRMAN suggested that the Rapporteur be asked to prepare a draft paragraph, based upon the Sub-Committee's discussion, for consideration at the next meeting.

Mr. McKINNON (Canada) suggested that, since the Rapporteur would not be in a position to complete his consideration of the subject prior to the next meeting, the Secretariat should be requested to make available to the various delegations by 11 a.m. on Monday, 4 November 1946, a draft of the paragraph on the basis of the Sub-Committee's discussion. It was agreed that Mr. Hawkins (United States) and Mr. Alamilla (Cuba) should prepare the draft for the Secretariat.

4. Next Meeting of the Sub-Committee  
Monday, 4 November 1946, at 3 p.m.  
The meeting rose at 12.55 p.m.

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