

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

Tenth Meeting
held on 19 November, 1946
at 2.30 p.m.

Chairman: Dr. COOMBS (Australia)

1. Submission of the Report of the Technical Sub-Committee

Mr. VIDELA (Chile), Chairman of the Technical Sub-Committee, described the work which had gone into the preparation of the Report. For two weeks the Sub-Committee had carried on its work in accordance with the procedure originally agreed upon. Since 4 November it had worked in accordance with the new procedure adopted by the Heads of Delegations. Had the original procedure been maintained, it would have taken several months to draft a Report. The Sub-Committee had decided not to divide its work among small drafting Committees because of language difficulties and the interest of all delegations in all of the subject matter referred to that Sub-Committee. Hence the Sub-Committee had not produced draft Articles.

He thanked the various delegations for the splendid work of their representatives on the Technical Sub-Committee.

Mr. ROUX (France), Rapporteur of the Technical Sub-Committee, commented on each of the Articles dealt with in the Report. He indicated that he would endeavour to bring out, as objectively as possible, the general trend of the Sub-Committee's discussions.

In the case of the problems raised in Article 9, it was not enough to guarantee the different nations most-favoured-nation treatment; they must be granted national treatment. One question raised was the levying of internal taxes or duties other than customs duties, which necessarily affected imported products as well as domestic products. The other question was that of the industrial and commercial regulations applicable to such products once they were out of bond. The principle set forth in the Charter was unchallenged, but difficulties arose in its application, either by reason of the apparent discriminatory nature of the various measures called for by particular situations, or as a result of the difficulties which certain countries - particularly federal states - experienced in securing the application of these regulations by their local authorities.

Article 10, following the 1921 Barcelona Convention, on which it could with advantage be more closely modelled, asserted the principle of freedom of transit. The authors of the Charter had found it necessary, at that juncture, to raise the delicate question - which arose also in connection with Article 8 - of the tariff rate to be applied to products imported through the territory of a third country. On account of the widely differing regulations existing and the insufficiency of information available on that point, the Sub-Committee was unable for the time-being to do more than propose the retention of the practices in force in various countries.

Article 11, dealing with measures designed to counter dumping and subsidies, showed the tendency of the United States, author of the Suggested Charter, to modify its own legislation in accordance with its proposals. The text appeared for the most part satisfactory and precise. It might, however, be improved by safeguarding states against the ill-considered application of those measures which, if applied without due deliberation, might well harm international goodwill.

In Article 12, dealing with tariff valuation, similar tendencies on the part of the United States could be observed. But in so controversial a matter it was not possible to formulate detailed regulations, and the Committee was inclined to favour the omission from the article of anything other than general principles.

Article 13 dealt with the simplification of customs formalities and condemned indirect protection. The final drafting of the text would be helped by the work of the League of Nations on which the Committee's work might well be based to a larger extent.

On the other hand, Article 14, dealing with marks of origin, raised a series of problems which had not before been very fully considered. Again the wisest course appeared to be keep to general principles. In connection with Article 14 the Sub-Committee had to face the important and delicate question of the protection required by several countries for the time-honoured trademarks of a geographical type covering certain goods of worldwide repute. The question at issue was whether it might be wise to round off the Charter by an explicit mention of that question.

Article 15 on the publication of customs regulations was also related to problems which had already been considered at Geneva. General agreement was secured; but it seemed advisable to deal cautiously with matters of internal fiscal dispute, and inadvisable to regulate too closely the temporary measures to be applied in favour of consignments already 'en route' when tariffs were increased or fresh restrictions imposed.

A similar measure of agreement was reached regarding the statistical information called for in Article 16, provided that progress by degrees could be considered sufficient compliance, and that the material difficulties experienced by some countries would be taken into account.

Article 17, dealing with boycotts, had fewer technical implications. The Sub-Committee attempted to define the idea as fully as possible.

The Committee's last task was the examination of Article 32 containing a list of the general exceptions to Chapter IV of the Charter. The Sub-Committee reviewed the list in the light of the principles put forward by Article 13. It felt that it was necessary to make it clear that the provisions of Article 32 should not be used as a cover for unjustifiable discriminatory practices or for practices designed to secure indirect protection.

In connection with many of the Articles reservations were expressed which were so wide in scope that they might be applied to the Charter as a whole. Those reservations related to:-

- (a) the necessity to make progress by degrees and to allow time for the putting into force of the obligations undertaken by States;
- (b) the special position of federal states, of countries not yet highly industrialized and of countries in the process of re-establishing their financial or political position;
- (c) the possibility of consulting the Organization before a particular measure was decided upon or afterwards, at the request of a member state which considered that it had suffered prejudice.

The Report was a piece of work done in good faith; it was presented in all humility by men of good will, who were accustomed to dealing with realities and who desired to put forward plans capable of practical application in the existing conditions, rather than to state abstract principles or to propose ambitious new departures.

The Rapporteurs asked for the confidence of the Committee, and begged it not to re-open the technical discussions.

He concluded by praising the work of the Sub-Committee's Chairman, Mr. VIDELA, and of Mr. JOHNSON, the United States Delegate.

2. Discussion of Possible Action taken with respect to the Report of the Technical Sub-Committee

The CHAIRMAN said that the Technical Sub-Committee, in adhering to the general procedure, had reported differences of opinion but had done little to reconcile such differences. He asked the Committee whether it wished to initiate further efforts to achieve some measure of agreement, or whether it wished to accept the Report as it was. Any agreement which might be reached would lighten the task of the Drafting Committee Meeting in January.

Mr. MORTON (Australia) pointed out that the question should be approached from the point of view of helping the January Drafting Committee. The various countries would not be able to send customs experts to the Meeting of the Drafting Committee as they had done in the case of the present Meeting of the Preparatory Committee. He suggested that where an amendment had been actively advocated by a group of countries and where such an amendment had not been actively opposed by more than a few countries, that amendment should be adopted for inclusion in the draft Articles. Such amendments would be adopted only if there was a reasonable amount of agreement. That would involve further work; but such work would probably be worth while.

Mr. HAWKINS (United States) thought that there were two alternatives before the Committee:

(a) It might remain in session in order to explore possibilities for agreement. Three or four days of concentrated work would probably be necessary. The United States would be willing to participate in such an effort, but other countries might not find it feasible.

(b) It might approve the Report as a working paper and submit it to the January Drafting Committee. If this were done, the Report should not be published. The Articles of the Charter, to which the working paper would relate, could be printed in square brackets so as to indicate that they had not been agreed upon.

The United States would be agreeable to either course of action.

Mr. KUNOSI (Czechoslovakia) thought that the second of the alternatives suggested by Mr. Hawkins would be most practicable. He did not think that the Preparatory Committee could accomplish more in the direction of obtaining agreement at the present time. The various delegations could report to their governments. The governments concerned could re-examine their positions with a view to reconciling differences.

Mr. FRESQUET (Cuba) supported the second of the alternatives suggested by the United States Delegate.

Mr. Van KLEFFENS (Netherlands) did not think that the January Drafting Committee would be qualified to deal with matters of substance. Therefore it would be helpful if some degree of agreement could be reached at the present meeting of the Preparatory Committee.

Mr. MCKINNON (Canada) felt that inasmuch as it would take four or five weeks to go through the Report with a view to reaching agreement, he would support the second proposal of the United States Delegate. Since the New York Drafting Committee would not be a policy Committee it would need the help of policy experts.

Mr. CHERRY (South Africa) said that the South African Delegation was anxious to do its part in order to lighten the work of the January Drafting Committee.

But it was possible that after reporting to their Governments the various delegations would be able to withdraw their reservations at the spring meeting of the Preparatory Committee. The report of the January Drafting Committee might of necessity be substantially the same as the report of the Technical Sub-Committee. South Africa would be agreeable to either course of action.

Mr. JOHNSON (New Zealand) asked whether the Rapporteurs and the Committee could go through the report again with the purpose of finding the points on which there had been fairly general agreement. It would be difficult for the January Drafting Committee to reconcile differences of opinion since it would not be a policy committee. It would be difficult to make policy experts available for the January meeting. Matters on which agreement could not be achieved at present might be held over for the second Preparatory Committee Meeting in the spring.

Various delegations might then be in a better position to reach agreement. He supported the proposal that further efforts to reach agreement should be made at the present time.

Mr. LE BON (Belgium) supported the second United States proposal. Further efforts at present would not be worth while.

Mr. SHOCKLE (United Kingdom) felt there was an indispensable minimum of subjects of interest to the Committee upon which decisions should be reached prior to the tariff negotiations in the Spring, if those negotiations were not to be unduly delayed.

Those subjects included tariff valuations, tariff classification, anti-dumping measures, and national treatment in internal taxation and regulations.

There must be agreement on certain matters, if it was desired to avoid evasion of the concessions to be considered during the negotiations.

He made one reservation in that connection with respect to national treatment, namely in respect of the exhibition of films. It was axiomatic that countries would insist upon reserving a proportion of their home market for domestic films. That was not strictly an economic matter. It involved cultural and other aspects of national life. Though theoretically a subject for national treatment, the question of films should at present be dealt with in bilateral agreements.

The League of Nations had done considerable work in the matter of freedom of transit and customs formalities. It would be unfortunate if that work was not studied, and reviewed with an eye to its incorporation in the Committee's work.

He proposed the appointment of a small Drafting Sub-Committee to consider the subjects to be dealt with prior to the tariff negotiations, and the minimum of provisions falling within the province of those subjects. The Drafting Sub-Committee could report to the Committee within a short time.

It might consist of five representatives of the United States, Australia, Canada, France and Czechoslovakia respectively. He was not suggesting that it should attempt to reconcile the divergent views regarding the various Articles considered by the Technical Sub-Committee, but merely that it should specify the subjects to which consideration must be given prior to the tariff negotiations next Spring.

Mr. LONNATHAN (India) supported the second alternative proposed by the United States Delegate. The area of agreement within the Technical Sub-Committee was not wide. If the Drafting Committee in New York tried to reconcile the divergent views, it would have to have technical assistance from various countries - which (he understood) was not within its terms of reference.

Mr. KAFKA (Brazil) supported the second alternative proposed by the United States Delegate. Could the Drafting Committee be instructed to reconcile divergent views and to deal with matters of substance?

Mr. KUNOSI (Czechoslovakia) wondered whether some of the differing points of view and reservations made in the report of the Technical Sub-Committee were not the result of its members having been technical experts.

Would not the Drafting Committee try to reconcile the divergent points of view?

The CHAIRMAN recalled that the Heads of Delegations had not authorized the Drafting Committee to concern itself with reconciling differences of opinion. Its function was to prepare neater, more accurate, and more consistent drafts of articles generally agreed upon. At the same time, if it perceived that differences in drafts were more apparent than real, it could forward them to the second meeting of the Preparatory Committee in April with explanatory notes and comments. In that sense, and to that extent, the Drafting Committee could reconcile divergent drafts.

Mr. HAWKINS (United States) felt that the tariff negotiations in the Spring would be very difficult, and that an additional burden should not be placed upon the negotiators of having to formulate provisions dealing with the various subjects upon which agreements had not been reached.

The CHAIRMAN pointed out that the Committee had before it a number of concrete proposals, which he summarized as follows:

- (i) The Committee could review the Technical Sub-Committee's report, and seek to obtain from each delegation a brief and precise statement of fundamental issues. In that way it might be possible to obtain a majority agreement on a number of problems.

The difficulty with that proposal would be the necessity for re-opening discussions, and continuing the work of the Committee for a longer period of time.

- (ii) The Committee might approve the report of the Technical Sub-Committee as a working document. Relevant draft clauses could be included in the published documents in square brackets; and the remainder of the report could be referred to the Drafting Committee, leaving it to the latter to seek a basis for agreement in April.

That would mean that the work so far done would have the approval of Committee II.

- (iii) The Committee could appoint a small Drafting Sub-Committee to go over the Sub-Committee's report and select those items upon which it was essential to have agreement before the tariff negotiations in April, and in the light of further consideration possibly to reach a greater measure of agreement. The remainder of the items, on which no reconciliation appeared possible, could be referred to the Drafting Sub-Committee for consideration and recommendation to the Preparatory Committee at the April meeting.

He felt that the suggestion to entrust the Drafting Sub-Committee with the work of reconciling divergent views would involve a type of work which had not been envisaged in its terms of reference.

In response to a question by the Delegate for India, he said that all proposals by the Drafting Sub-Committee would be tentative, as all similar suggestions were for the purposes of the meeting.

Mr. MCKINNON (Canada) pointed out that only ten Articles had been referred to the Committee for consideration, and that the five Articles which the United Kingdom Delegate regarded as essential probably covered the most important part of the field of the Committee's consideration. Could a new Sub-Committee expect in a few days to reach agreement on subjects which had been the object of close study for several weeks?

Mr. OPTEDAL (Norway) doubted whether a Drafting Sub-Committee could accomplish more than the Technical Sub-Committee. The Draft Charter had been reviewed in Norway, and very little objection was found to any portion of it. Many of the differences in views expressed in the Sub-Committee's report might be due to the technical nature of the Articles considered, and objections might be withdrawn upon consideration by government representatives at home. Thus, national representatives on the Drafting Committee might be able to withdraw objections referred to in the report.

He supported the proposal of the United States Delegate that the report should be submitted as a working document for the Drafting Committee.

Mr. MCKINNON (Canada) took the chair.

Mr. KAFKA (Brazil) felt that the proposed small Drafting Subcommittee would be unable to prepare an effective report. Its recommendations would be hedged about by too many reservations.

If the Technical Sub-Committee's report was to be submitted to the Drafting Committee with a view to its reconciling the divergent views expressed therein, the terms of reference of the Drafting Committee would have to be changed. Could the Heads of Delegations reconsider their decision?

Mr. LE BON (Belgium) supported the Canadian Delegate. A long discussion would result if a new sub-committee was appointed.

Mr. NATHAN (France) supported the suggestion that the Subcommittee's report should be adopted as a working document, and sent to the Drafting Committee.

Mr. van KLEFFENS (Netherlands) favoured any attempt to reduce the number of articles upon which there was dispute.

If the report was adopted as a working document, would a delegate be permitted to make changes or corrections? He wanted an addition to the discussion on article 11 (page 15 of E/FC/T/C.II/54) to the effect that the Netherlands Delegation felt there should be a provision to make it impossible for an importing country to impose countervailing or anti-dumping duties on the grounds of subsidies permissible under terms of the Charter.

Mr. LAWRENCE (New Zealand) pointed out that the Sub-Committee's report did not reflect the general opinion of its members with respect to paragraph 3 of article 13 (page 22 of the report). Only the United States Delegate favoured the retention of the final sentence of the paragraph.

The CHAIRMAN said he would insist upon a change in the report, if at any point it did not reflect the views of his own Delegation.

Mr. KUNOSI (Czechoslovakia) reiterated his view that nothing would be gained by the appointment of a small Drafting Sub-Committee. There might be chance of agreement among the members of the Sub-Committee; but other Delegations would surely reserve their positions.

He assumed that delegations would have full opportunity to make comments and corrections with regard to the report.

The CHAIRMAN assured him that all comments received had been handed to the Rapporteur and would be added to the report.

He then called for a vote on whether the Committee should attempt to reach a greater area of agreement by extending the time of its deliberations.

The proposal was rejected.

Mr. VIDELA (Chile) pointed out that, when the Technical Sub-Committee began its work, the proposal was made that small Drafting Sub-Committees should consider specific Articles. The proposal was rejected because each delegation wished for an opportunity to consider each Article. If that occurred among members of the Technical Sub-Committee, how could the Committee expect agreement on the basis of study given by a small Sub-Committee, consisting possibly of persons who had not served on the Sub-Committee?

Dr. COOLBS resumed the Chair.

Mr. KUNOSI (Czechoslovakia) thanked the United Kingdom Delegate for proposing that Czechoslovakia should serve on the small Drafting Sub-Committee. Since Czechoslovakia had few, if any, alterations in the Draft Charter to propose. It would be more suitable for the United Kingdom Delegate to serve.

Mr. NEHRU (India) felt that any constructive attempt to lessen the area of disagreement would be worth while, and no serious harm would be done by the appointment of a Sub-Committee. But the Indian Delegation was not prepared to commit itself in any way.

Mr. MORTON (Australia) believed that a five-member Sub-Committee would represent the views of only five delegations. A report from such a committee would not carry the problem further than the original report of the Rapporteur.

The CHAIRMAN said that the following questions were before the Committee:

(1) The question whether the report was to be approved as a working paper for submission to the Drafting Committee.

(2) The question whether an effort should be made to reach more agreement than was reflected in the present report.

The two courses of action were not inconsistent; and either one or both might be adopted. In the event of its being decided to make further efforts to reach agreement, there was the question whether that task should be referred to a small Sub-Committee, or whether it should be referred back to the Technical Sub-Committee.

Mr. KUNOSI (Czechoslovakia) asked whether a decision of the Preparatory Committee to adopt the Sub-Committee's report as a working paper would be referred to at all in the report of the Preparatory Committee which was to be made public.

The CHAIRMAN answered in the affirmative.

Mr. NEHRU (India) asked what would be published with respect to Articles 9 - 15.

The CHAIRMAN said that the report of the Technical Sub-Committee, as it had been submitted, attributed specific views to specific countries. Hence, publication of the report in that form would probably not be appropriate. He did not know whether the Articles as drafted by the United States would be published in square brackets, or whether there would be a blank space in the published Draft Charter. Since the same question would arise in connection with other Articles, it should be left to the Heads of Delegations to decide the matter.

The CHAIRMAN called for a vote on the first of the questions which he had outlined.

It was agreed that the report of the Technical Sub-Committee, if approved, should be submitted to the Drafting Committee as a working paper.

The CHAIRMAN called for a vote on the following Resolution:

It is resolved that an attempt should be made within the next two days to reach tentative agreement on draft Articles on minimum provisions related to matters covered by the report of the Technical Sub-Committee, with which it is important to deal before the second session of the Preparatory Committee.

The Resolution was rejected.

Mr. SIM (Canada) explained that the report, which had been prepared by five Rapporteurs, represented a sincere effort to encompass the problems to be covered. It would be unrealistic to believe that a worthwhile job could be done in twenty four of forty eight hours by another group, however competent. That explained his vote against the Resolution.

3. Consideration of the Provisions of the Report of the
Technical Sub-Committee

General Narrative Statement
(at beginning of Report, E/FC/T/C.II/54)

Agreed

Technical Sub-Committee's Confidential Report to the
Drafting Committee

Agreed

Article 9

Mr. MORTON (Australia) pointed out with respect to paragraph 2 (b) that a number of countries had reserved their position. He had prepared wording for an additional clause for the last sentence of paragraph 2 which he thought would make it possible for those countries to withdraw their reservations.

The CHAIRMAN suggested that the Australian suggestion should be submitted in writing for incorporation in the report. Since it had been agreed not to try to reconcile differences of opinion, the recommendation would be set forth as representing the view of the Australian Delegation.

Mr. CHERRY (South Africa) said that South Africa's reservation referred to in paragraph 2 (b) had originally related to mixing of motor spirits. South Africa also reserved its position with respect to the assembly of motor vehicles.

Mr. TUNG (China) asked whether the phrase "procurement of governmental agencies for supplies for governmental use" in paragraph 5 included supplies for public works contracts.

The CHAIRMAN suggested that the Secretariat should find out whether the provisions of the report with respect to paragraph 5 were consistent with the decision of the Procedures Sub-Committee on governmental purchases and report back to the Committee.

Agreed

It was agreed that the Committee should meet at 3 p.m. on 20 November 1946.

The meeting rose at 6.15 p.m.
