

PREFARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

COMMITTEE II

SUB-COMMITTEE ON PROCEDURES

Third Meeting  
Held on Friday, 1 November 1946  
at 8 p.m.

Chairman: Mr. SFEKENBRINK (Netherlands)

1. Introductory Remarks by the Chairman

The CHAIRMAN said that the target date for the conclusion of the work of Committee II had been set for 15 November, and that of the Sub-Committee on Procedures for 10 November. The work of the Sub-Committee would therefore have to be accelerated.

2. Discussion of Most-Favoured-Nation Treatment

The CHAIRMAN drew the Committee's attention to two documents prepared by the Secretariat. The first of these was a comparison between paragraph 1 of Article 8 of the Charter and the League of Nations clause on general most-favoured-nation treatment. The second document was a paper on multilateral clauses, which was adopted by the League of Nations, and which denied the benefits of open-end conventions to countries which did not assume the obligations.

Mr. HAWKINS (United States) felt that the difference between paragraph 1 of Article 8 of the Charter and the League of Nations clause was so small, that it became solely a question of style of drafting.

Mr. SHACKLE (United Kingdom) considered the first part of paragraph 1 of Article 8 of the Charter more precise than the

League of Nations clause. It also dealt with taxes on exchange, and he therefore proposed its adoption, subject to amendments.

The Committee agreed to use the United States drafting.

The CHAIRMAN hoped that the delegates had had time to study the document on government contracts circulated by the Secretariat. It proposed the following re-draft of the last sentence of paragraph 1 of Article 8: "the principle underlying this paragraph" (shall apply to purchases from other member countries of goods for the use of Central Governments, and) "shall extend to the awarding by such Governments to nationals of other member countries on contracts for public works, in respect of which each member shall accord fair and equitable treatment to the commerce of the other members".

Mr. SHACKLE tentatively proposed the inclusion of a new article to deal with the subject matter covered in the last sentence of paragraph 1 of Article 8 of the Suggested Charter and the question of governmental procurement of supplies for public use which had been one of the subjects dealt with in paragraph 1, Article 9. He felt that these matters should not be dealt with in two separate articles. He therefore proposed the insertion of a new article, consisting of two paragraphs, on the following lines: "1. The principles underlying Articles 8 and 9 shall also extend to the purchases by members, and the awarding by them of contracts for the supply, of goods for the use of their central governments and the organs and enterprises of their Central Governments which are not intended for resale either in their original state or after processing."

The provisions of paragraph 1 of this Article would not involve

(a) any obligation with references to purchases for military establishment, or

(b) preclude the grant by members of preferences of a reasonable amount to domestic supply, purchases by Central Governments for their own use, and in cases of members within one of the groups of territories referred to in Article 3 (2).

His suggested Article made no reference to contracts for public works. The awarding of contracts for public works involved:

- (i) the question of services;
- (ii) the question of the supplying of goods.

He thought that the Charter should be confined to the treatment of goods, and that the question of services should not be entered into at all. The treatment of goods was covered.

His proposed paragraph was confined to Central Governments only, in order to ensure equitable treatment. Otherwise some countries would have greater obligations than others.

His suggested amendment dealt with non-commercial purchases. The question of commercial purchases was dealt with under paragraphs 26, 27 and 28 of the Charter.

Mr. VIDELA (Chile) said that he was not prepared to discuss the amendment proposed by the United Kingdom. The text of the amendment had only just been distributed, and he had not had time to study it.

In order to give delegates time to study the United Kingdom proposal, it was agreed to postpone discussion of the proposal until a later date.

Mr. ADARKAR (India) suggested that the most-favoured-nation clause should be extended to provide that each member nation would accord fair and equitable treatment within its own borders to business men of other member nations engaged in commercial activities.

Mr. HAWKINS (United States) had no objection to the granting of fair and equitable treatment to business men of other member nations; but he questioned whether such a provision should be included in the

Charter. Inclusion of such a provision might lead to discussion of many other complicated establishment matters. The Charter should be limited in the main to treatment accorded to goods. Paragraph 5 of Article 50 provided that the Organization might make recommendations with respect to international agreements concerning establishment.

Mr. LECUYER (France) and Mr. GUERRA (Cuba) agreed that it would not be wise to extend the provisions of the Charter to the complex field of establishment.

It was generally agreed that establishment should not be covered by the most-favoured-nation clause.

Mr. ADARKAR (India) said that he would accept the view of the Committee.

In response to a question asked by Mr. FARANAGUA (Brazil), Mr. HAWKINS (United States) said that coastal trade was not covered by Article 9. Provisions of that Article were restricted to treatment of goods, and did not relate to treatment of shipping facilities. Nothing in the Article would obligate a member to allow other members to participate in its coastal trade.

Mr. GUERRA (Cuba) said that Cuba would present an amendment to Article 8 at the next meeting. The amendment could be inserted at the end of the Article, and did not require discussion at the present meeting.

Mr. VIDELA (Chile) reminded the Sub-Committee that Chile had proposed an amendment to paragraph 2 of Article 8 which would add an exception, known as the "bordering countries clause", to the exceptions already listed in that paragraph.

Preferences in force between bordering countries should not be treated on a different basis from the preferences covered by subparagraphs (a) and (b) of paragraph 2, Article 8. He spoke of the

history of these bordering countries' preferences, and pointed out that the "bordering countries clause" had been inserted in various agreements still in force.

Chile would be agreeable, if the Charter made no exceptions whatsoever for existing preferential arrangements. But, if any preferences were to be excepted, the preferences of bordering countries should be excepted also.

Mr. HAWKINS (United States) pointed out that inclusion of an exception for preferences of bordering countries in paragraph 2 of Article 8 would have only a temporary effect. It was envisaged that the preferences excepted by paragraph 2 would be eliminated by negotiations. Such excepted preferences were of long standing; and it was felt that the nations concerned should receive some benefit in return for giving them up. He wondered if the point made by the Delegate for Chile would be met by the inclusion of a new sub-paragraph (c) (after sub-paragraph (b) of paragraph 2), excepting "other long-established preferences now in force affecting in important degree the economies of the countries concerned". At a later date a drafting committee could list the specific preferences falling within that general category.

Mr. ADARKAR (India) said that the United Kingdom's revision of paragraph 2 recognized only existing preferences, based mainly on political considerations, and ignored possible future preferences based on economic factors. The industrialization of small countries bordering on India might be impossible, if the products of such countries did not receive preferential treatment in the Indian market. Such regional preferences would likewise be excluded under the wording of the amendment which the United States Delegate had suggested in response to the proposal of the Delegate for Chile.

Where it would not be convenient to make such regional

preferences open to other countries, it should not be necessary to do so.

The CHAIRMAN felt that the Committee should endeavour for the present to consider general categories of exceptions.

Mr. VIDELA (Chile) said that a special Sub-Committee was considering the question of excepting quota-based preferences. Pending receipt of that Sub-Committee's report, adequate consideration of the extension of exceptions for preferences would not be possible. The exception proposed by Chile should be treated on the same basis as the exceptions already listed, regardless of whether the exceptions listed under paragraph 2 were temporary or permanent in their effect. Chile (he repeated) would be agreeable, if the Charter provided for the automatic elimination of all preferences.

The CHAIRMAN suggested that the Sub-Committee should try to work out formulas for general classes of exceptions, but in such a way as to take into account the specific proposals for exceptions which had been made by various countries. After the forthcoming tariff negotiations, which would reduce or eliminate certain preferences, there could be discussion of possible exceptions for such preferences as remained.

Mr. HAWKINS (United States) agreed with the CHAIRMAN's suggestion that proposed exceptions should be classified. He thought that the Sub-Committee should first consider the temporary exceptions, which would be included in paragraph 2 of Article 8. It could then consider the suggested permanent exceptions, such as exceptions for regional preferences, for open-end agreements, and other permanent preferences. The Sub-Committee could subsequently consider other questions such as the dates used in paragraph 2.

The CHAIRMAN said that the views of the United States Delegate

were the same as his own.

Mr. GUERRA (Cuba) thought that the permanent exceptions should be considered before the temporary exceptions, since the feeling of the Sub-Committee with respect to permanent exceptions might affect Cuba's position in regard to temporary exceptions.

Mr. LECUYER (France) noted the close relationship between the proposed permanent exceptions and the general subject of regional agreements.

Mr. HAWKINS (United States) said he had suggested that the discussion of temporary exceptions should come first, because these were dealt with in paragraph 2 of Article 8. Permanent exceptions would logically be considered in connection with Article 33. If temporary exceptions were considered first, the Delegate for Cuba could reserve his position.

Mr. GUERRA (Cuba) said that he would be agreeable to the discussion of temporary and permanent exceptions in the order suggested by the United States Delegate on the understanding that Cuba could reserve her position.

In response to a question by Mr. VIDELA (Chile), Mr. HAWKINS (United States) said that he would be willing to comment further on the Chilean proposal for a "bordering countries clause" at the next meeting.

Mr. VIDELA (Chile) said that he would not be able to commit his Delegation at the meeting on the following day. He would have to reserve his position.

It was agreed to discuss temporary exceptions at the next meeting on 2 November 1946.

The CHAIRMAN suggested that at the next meeting consideration should be given to the appointment of a rapporteur.

The meeting rose at 10.55 p.m.