

**DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT**

**SUMMARY RECORD OF THE SIXTH MEETING**

Held at Lake Success on 27 January 1947 at 10:30 a.m.

Mr. LOPEZ FRESQUET (CUBA) referred to the discussion which had taken place in the Committee in connection with Article 25 and pointed out that he wished to associate himself with the alternative text which was proposed by the Indian Delegate in document E/PC/T/C.6/W.5. Mr. WAITE (NEW ZEALAND) made a similar statement.

Mr. ADARKAR (INDIA) said that in submitting the amendments which were set out in that document, his purpose was really to have the ideas expressed in the amendment worked into the text of Article 13 as it had been agreed by the Committee. The CHAIRMAN remarked that Mr. ADARKAR's amendment would be passed on to the Second Session together with a suitable note of his wishes.

The Committee then continued its discussion of Article 26. Mr. PHILLIPS (AUSTRALIA) pointed out that under the wording of sub-paragraph (b) of paragraph (3) as it was set out in the United States amendment, the Organization was bound to review all restrictions which were in existence on the date the Charter came into operation even if some of those restrictions were lifted before two years had elapsed. He doubted whether a review of restrictions which had been lifted was really necessary and therefore, proposed that the conclusion of sub-paragraph (b) be amended so as to read, "and still maintained under paragraphs (1) and (2) at the time of the review". This was agreed. It was also agreed that the word "maintaining" at the commencement of sub-paragraph (b) should be altered to "applying".

/On the suggestion

On the suggestion of Mr. SHACKLE (UNITED KINGDOM), the words, "Members shall accept an invitation to participate", were changed to "Members thus invited shall participate".

In connection with sub-paragraph (c) Mr. SHACKLE (UNITED KINGDOM) proposed that the phrase, "under paragraphs (1) and (2)", should be inserted after the word "proposes" in the first sentence. This was agreed.

Mr. PHILLIPS (AUSTRALIA) drew the Committee's attention to the fact that although under the last sentence of sub-paragraph (c) the action of a Member which had obtained the prior approval of the Organization for the application of a restriction was not subject to challenge under sub-paragraph (d), the provisions of sub-paragraph (a) would still apply in that case. Accordingly, he suggested the addition of words which would prevent the application of sub-paragraph (a) when prior approval had been obtained under sub-paragraph (c).

Mr. LEDDY (UNITED STATES) agreed with Mr. PHILLIPS' proposal but Mr. SMITH (CANADA) pointed out that the final sentence of sub-paragraph (a) had been inserted in order to prevent commercial speculation. If a provision were inserted in sub-paragraph (c) to prevent the application of sub-paragraph (a) in the circumstances set out in the former sub-paragraph, the likelihood of commercial speculation would be increased.

After further discussion it was agreed that no alteration in this respect should be made in sub-paragraph (c) but that the Australian Delegate's proposal should be mentioned in the Report to the Second Session. However, it was agreed that the concluding words of sub-paragraph (c) should be redrafted to read, "on the ground that such action is inconsistent with the provisions of paragraphs (1) and (2)".

Mr. JUSSIANT (BELGIUM-LUXEMBOURG) suggested that under sub-paragraph (d), the Organization, as well as any Member, might be allowed to take the initiative. In support of this suggestion, he argued that the Organization

/had been

had been given the initiative in certain other parts of the Charter and that action by the Organization was impersonal and was, therefore, less likely to be resented by a Member than action taken by another country.

Mr. SMITH (CANADA) stated that if Mr. Jussiant's suggestion was adopted, the Organization would find itself in the position of both complainant and judge. Also, under the terms of the sub-paragraph as drafted in London, the Organization would find itself in the peculiar position of having to ascertain whether it itself had a prima facie case for action.

The CHAIRMAN said that he doubted whether action by the Organization was more impersonal than action by a particular country. The Organization would always require some impetus and the identity of the country supplying this impetus could hardly be kept secret.

Messrs. LECUYER (FRANCE) and LEDDY (UNITED STATES) expressed preference for the text as it had been drafted at the First Session. Mr. HEYNER (INTERNATIONAL MONETARY FUND) strongly supported Mr. Jussiant's suggestion stating that the Fund had raised this question at the First Session and there it had been deferred because at that time there was no precedent in the Charter. However, now a precedent did exist in paragraph (2) of Article 27.

Mr. SMITH (CANADA) said that he would accept Mr. Jussiant's suggestion if the point of jurisprudence which he had raised could be satisfied by redrafting.

Mr. PHILLIPS (AUSTRALIA) said that this question had been specifically discussed at the First Session and it had been definitely decided then not to give the Organization any initiative. Mr. ALVAREZ (CHILE) expressed preference for the text produced at the First Session.

Mr. SHACKLE (UNITED KINGDOM) said that he did not see any danger in not providing that initiative should rest with the Organization because if any substantial damage were being done, the Member would be certain to complain.

/After Mr. BAYET.

After Mr. BAYER (CZECHOSLOVAKIA) had said that he preferred the text produced at the First Session, Mr. Jussiant said that he would not argue the point further but would present an alternative draft.

Mr. LUXFORD (INTERNATIONAL BANK) agreed with Mr. Hexner and Mr. Phillips that the question had been discussed at the First Session and he stated that considerable interest had been taken in it at that time. This interest had been taken because the application of quantitative restrictions had an effect extending beyond the boundaries of one country. It was the broad effects of quantitative restrictions upon world economy that the Organization would have in mind. Mr. LUXFORD also stated that it had been informally suggested at the meeting of the First Session in London that this question might be considered further at a later stage.

Mr. WHITE (NEW ZEALAND) said that he would prefer no amendment to the text. The CHAIRMAN noted that Mr. JUSSIANT would present an alternative draft.

In connection with sub-paragraph (d), Mr. LEDDY (UNITED STATES) suggested that the phrase, "under paragraphs (1) and (2)", be amended to, "under paragraphs (1), (2) and (4)". Several Delegates opposed this suggestion and Mr. Leddy remarked that if it was agreed that paragraph (4) was covered by sub-paragraph (d) without any specific mention of paragraph (4) being made in sub-paragraph (d), he would not press his amendment. It was agreed that this interpretation was correct and that it would be noted in the Drafting Committee's Report.

Mr. PHILLIPS (AUSTRALIA) suggested that words be added to sub-paragraph (d) to enable the Organization to attempt to bring about conciliation between Members before the stage of withdrawal or modification of restrictions was reached. Several other Delegates supported this suggestion and to give effect to it, it was agreed to insert the following words after, "within the competence of the Fund", in sentence four: "and, if it considers desirable, after submitting observations to both parties with the aim of achieving a satisfactory settlement of the matter in dispute".

/Mr. LEDDY

Mr. LEDDY (UNITED STATES) drew the Committee's attention to the last phrase of sub-paragraph (d) and pointed out that it would be very difficult for the Organization to determine from what obligations a Member should be released. Mr. PHILLIPS (AUSTRALIA) suggested that to meet Mr. Leddy's point, the word, "specify" should be changed to "approve". This was agreed.

Mr. PHILLIPS (AUSTRALIA) suggested that to bring sub-paragraph (e) into line with sub-paragraph (d), the words, "general relaxation of restrictions" should be changed to "modification of restrictions".

Mr. LEDDY (UNITED STATES) pointed out that the text as drafted at the First Session was much wider than the words which were suggested by Mr. PHILLIPS. After some other Delegates had opposed any amendment in this respect, Mr. PHILLIPS agreed not to press his point.

Mr. SHACKLE (UNITED KINGDOM) queried whether the United States suggestion to add the words, "imports required" to paragraph (4) was necessary. The Members of the Committee were evenly divided on the question and it was eventually agreed that the clause should be provisionally worded, "in giving effect to the restrictions on imports under this Article, a Member may select imports for restrictions on the grounds of essentiality in such a way as to give priority to imports required by its domestic employment, reconstruction, development or social policies and programmes", and that the words should be further considered by the Legal Drafting Sub-Committee.

It was agreed that the last sentence of paragraph (5) should be redrafted to read as follows: "On the invitation of the Organization, Members shall participate in such discussions".

It was agreed that the words in brackets at the end of paragraph (6) should provisionally remain in the text until the Legal Drafting Sub-Committee was able to decide whether they should be deleted in the light of the Drafting Committee's treatment of the provisions on State-trading.

Paragraph (7) was adopted as drafted at the First Session

/Mr. MA

Mr. MA (CHINA) asked whether the Committee should not give further consideration to the period of two years mentioned in sub-paragraph (b) of paragraph (3).

Mr. SMITH (CANADA) pointed out that the computation of this period was merely a question of administrative detail whilst Mr. LEDDY (UNITED STATES) replied that a period of two years was calculated to elapse on approximately the same date as the transition period mentioned in the Articles of Agreement of the International Monetary Fund.

Subject to the amendments mentioned above, the United States redraft of Article 26 was accepted provisionally.

#### Discussion of Article 27

It was agreed that the phrase, "pursuant to this Section" in the second line of paragraph (1) should be deleted and that the word, "Member" in the third and fourth lines of the same paragraph should be amended to, "Member country".

Subject to these two amendments the United States redraft of paragraph (1) was tentatively accepted.

In connection with paragraph (2), Mr. SHACKLE (UNITED KINGDOM) stated that he preferred the text as drafted at the First Session to the United States amendment, his principal reason being that the United States redraft implied at least some measure of approval for open quotas.

In reply to Mr. SHACKLE, Mr. LEDDY (UNITED STATES) said that the Report of the First Session established the following order of preference - firstly, fixed quotas, then, if these were not possible, import licenses, and in the event of import licenses not being available, quotas allocated among sources of supply. He considered that the text produced at the First Session did not make this order of preference clear and that that text was contradictory in some respects.

Messrs. LECUYER (FRANCE) and BAYER (CZECHOSLOVAKIA) favoured the text as drafted at the First Session whilst Mr. ADARKAR (INDIA) supported the

/United States

United States redraft as removing the inconsistency which existed between sub-paragraphs (a) and (d). Mr. GUERRA (CUBA) agreed with Mr. Shackle's interpretation of paragraph (2), but at the same time, he thought that some alteration in the text was needed.

Mr. SHACKLE (UNITED KINGDOM) said that he thought some confusion arose out of the use of the term, "global quotas". He suggested that this term be avoided throughout the paragraph.

After Mr. MA (CHINA) had spoken in favour of the United States redraft, Mr. LEDDY (UNITED STATES) suggested that an ad hoc sub-committee be appointed to further consider paragraph (2).

The CHAIRMAN agreed with Mr. LEDDY'S suggestion and a sub-committee was set up consisting of the Delegates of the United Kingdom, the United States, France and Cuba.

The Sub-Committee on Tariff Procedures was also established and the Delegates of United Kingdom, United States, India, Czechoslovakia, Union of South Africa, New Zealand, Brazil, Lebanon, China, France and Norway were appointed as its members.

It was agreed that the next meeting of the Drafting Committee should be held at 10:30 a.m. on 28 January 1947 and that the Legal Drafting Sub-Committee should also meet on that date at 2:45 p.m.

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