

UNITED NATIONS

NATIONS UNIES

ECONOMIC  
AND  
SOCIAL COUNCIL

CONSEIL  
ECONOMIQUE  
ET SOCIAL

RESTRICTED  
E/PC/T/L/PV/35  
11 August 1947

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

VERBATIM REPORT

THIRTY-FIFTH MEETING OF COMMISSION "A"  
HELD ON MONDAY, 11 AUGUST 1947 at 10.30 A.M. IN THE  
PALAIS DES NATIONS, GENEVA.

M. MAX SUETENS (Chairman) (Belgium)

Delegates wishing to make corrections in their speeches should address their communications to the Documents Clearance Office, Room 220 (Tel. 2247).

Delegates are reminded that the texts of interpretations, which do not pretend to be authentic translations, are reproduced for general guidance only; corrigenda to the texts of interpretations cannot, therefore, be accepted.

CHAIRMAN: (Interpretation): The Meeting is called to order.

Gentlemen, on our Agenda today we have the last readings of Articles 34, 35, and 38 of the Draft Charter. The final drafting of these Articles was referred by us to a sub-Committee chaired by Mr. Brown of the United States Delegation and the report of that Committee is contained in Document E/PC/T/W/258 dated July 31. It was then revised by the Legal Drafting Committee whose report is contained in Document E/PC/T/155 to which is added a corrigendum dated August 8. First of all, I shall call upon Mr. Brown to ask if he has any further explanations to give in addition to the Report of his Committee.

Mr. WINTHROP BROWN (United States): Mr. Chairman, I do not think that I have anything to add to the Report of our Committee contained in E/PC/T/146. However, if anyone has any questions as to the reasons for any of the changes which the Committee recommends, I should be very glad to try to answer.

I have also examined the draft of the Legal Drafting Committee, E/PC/T/155, as corrected, and as far as I am concerned it is entirely satisfactory and I would imagine that the Commission would prefer to use that document as the basis for discussion.

CHAIRMAN (Interpretation): We will therefore follow Document E/PC/T.155 as corrected by Corrigendum 1. of August 8, 1947. We will start with Article 34. Are there any observations on Paragraph 1 (a)?

The Delegate of Belgium.

Mr. Pierre FORTHOMME (Belgium): (Not interpreted).

(Interpretation): The remarks of the Belgian Delegate do not apply to the English text.

CHAIRMAN (Interpretation): Are there any further observations?

Mr. Winthrop G. BROWN (United States): Mr. Chairman, I have a very important suggestion; that the comma in the third line of the English text should be deleted - I beg your pardon, it has already been done.

CHAIRMAN: (Interpretation): Are there any other observations? Is that agreed?

(Agreed)

Are there any observations on sub-paragraph (b)? We have a Belgo-Luxembourg amendment.

The Delegate of Belgium.

M. FORTHOMME (Belgium) (Interpretation): Mr. Chairman, our amendment only aimed at re-drafting the French version of sub-paragraph (b) of Article 34, which was very faulty, but the fact that an English version was circulated may have created some confusion. We have nothing to say and nothing to amend in the English text, which seems to us quite satisfactory. As far as the French text is concerned, we have submitted our amendment to the French Delegation, who will probably support it.

CHAIRMAN: The Delegate of France.

M. LECUYER (France) (Interpretation): The Belgian amendment is agreeable to the French Delegation.

Mr. S. L. HOLMES (United Kingdom): Mr. Chairman, I think it was perhaps an accident that this paper, W/268, appeared in English at all in the circumstances, but there are certain differences - possibly due to the difference in language - between the alleged translation of the French revision and the existing text as it appears in the Drafting Committee's report on Article 34, 1 (b).

I wonder whether it would be desirable if the Legal Drafting Committee were given another opportunity of looking at the text of Article 34, 1 (b) as now proposed by the French version. I would not suggest that there are serious difficulties at all, but I would feel a little happier if the Legal Drafting Committee were informed of this revision and were asked to look at it.

CHAIRMAN (Interpretation): (to M. Forthomme): I do not think there is any essential difference in the two texts, so far as I can see.

M. FORTHOME (Belgium): (Not interpreted).

Mr. S. L. HOLMES (United Kingdom): They could, of course, be asked to look at it now; I understand they are in session.

CHAIRMAN (Interpretation) (to Mr. Holmes): I have no intention of sending the text to any other sub-committee. I think if there is a divergence in any text, we should resolve this problem right away, and here.

The Delegate of Belgium.

M. PIERRE FORTHOMME (Belgium) (Interpretation): Mr. Chairman, I had to make this amendment of the French version because it was attempted several times to translate the French text following more or less closely the construction of the English text and the results were highly unsatisfactory; all the attempts only produced monstrosities; therefore I made an analysis of the English text and took out the main ideas and reproduced them in the French text.

The first fact that struck me as being important was that there was a concession regarding preferences. The second fact; that as a result of those concessions the importers of the country were affected. The third fact; the country to which those importers belonged made a request to the country granting them a concession; and the fourth idea: the countries to which the request was made took action.

All these ideas do not appear in the same order in the French version as in the English one. The same ideas appear in both, and I think we could have here a comparative reading of the two texts from that angle.

Mr. S.L. HOLMES (United Kingdom): We were not quite clear why the word "established" appeared in the French text as translated into English. That may be just a peculiarity of language, and if that is all it is, we should not object to it. The present English text talks about "domestic producers of like or directly competitive products in the territory of a Member which receives or received such preference....". Is the word "established" or "établi" in French necessary?

M. PIERRE FORTHOMME (Belgium) (Interpretation): Mr. Chairman, I had to use that word on account of the very long sentence here, and I thought it was necessary to show that the following words - namely, "in the territory of a Member..." and so on applied to

the word "producers" which is separated from "in the territory" by quite a few words.

CHAIRMAN (Interpretation): Are there any other observations on paragraph (b)? It is adopted.

Paragraph 2.

M. ANGEL FAIVOVICH (Chile) (Interpretation): In London and New York our delegation as well, I believe, as that of Canada and Cuba, made a reservation on this text because we thought that such measures should not be taken without consultation with the Organisation. In the next text that is now before us we see that these provisional measures have been reduced to the minimum, and in these conditions we are glad to withdraw all reservations and to accept the next text.

CHAIRMAN (Interpretation): Are there any other observations?

Paragraph 2 is then adopted.

Paragraph 3, sub-paragraph (a). No observations? Adopted.

Sub-paragraph (b). No observations? It is therefore adopted.

Mr. WINTHROP BROWN (United States): Mr. Chairman, I have one general observation to make in respect to this whole paragraph. By its terms this paragraph makes no distinction between the Members of the Organisation who are parties to the General Agreement on Tariffs and Trade, and the Members who are not, and it is quite possible that for some periods of time Members may be Members of the Organisation, but may not have had time or opportunity to participate in the negotiations under Article 24 and to become parties to the General Agreement. It would seem to us that if a Member should have to take action under Article 34 by modifying or withdrawing a tariff

concession negotiated under Article 24, it should not be obligatory to consult with Members of the Organisation who were not parties to the Trade Agreement, and also it seems to us that in such a case a Member who was not a party to the Trade Agreement who had, . . . so to speak, paid nothing for the concession, should not have any rights of compensatory action under Article 24. We would therefore suggest for the consideration of the Committee that it be made clear in this Article by a clause at the end that nothing in the Article would require a Member who acts with respect to a tariff concession or preference concession negotiated under Article 24 to have to obtain the agreement of Members who are not parties to the General Agreement, and that Members who are not parties to the General Agreement should not have the right of compensatory action in these circumstances.

I am very sorry that this thought did not come to us until last night, and I have not been able to circulate any text which would accomplish that result, but I have such a text here and I could read it . I have about a dozen copies if the idea lends itself to the Committee.

Mr. W. BROWN (United States): Mr. Chairman, would the Committee care to have me read the suggested Draft which we have proposed?

We would suggest that a new paragraph 4 be added to read as follows:- "Nothing in this Article shall be construed (a) to require any Member, in connection with the withdrawal or modification by such Member of any concession negotiated under Article 24, to consult with or obtain the agreement of Members other than those Members which are parties to" (I am going to change the text) "the General Agreement on Tariffs and Trade, or (b) to authorise any such other Members not parties to such agreement to withdraw or suspend obligation under this Charter by reason of the withdrawal or modification of such concession."

CHAIRMAN (Interpretation): I would suggest that we postpone temporarily the discussion of this text until we can distribute a French translation. When we get the translation we will continue the discussion of the suggested new Article.

M. F. FORTHOMME (Belgium) (Interpretation): I support the suggestion, Mr. Chairman.

CHAIRMAN (Interpretation): Therefore, we pass on to Article 35.

(L. P. FORTHOMME (Belgium) made a remark which does not apply to the English text, and which was not translated).

M. LECUYER (France) (Interpretation): I support the drafting amendment as proposed by my Belgian colleague.

CHAIRMAN (Interpretation): I suppose you all agree with these slight modifications of the French text?

We now come to article 35. I suppose that Mr. Brown will have something to say in this respect.

MR. W. BROWN (United States): Mr. Chairman, the important change in this connection is to remove paragraph 2 which appeared in the New York Draft and make it applicable to the whole Charter and put it in Chapter VIII. I think that general plan received the tentative approval of the Commission when these articles were first discussed. It was the unanimous recommendation of our sub-committee, and so that paragraph was revised and referred to the sub-committee on Chapter VIII, which also agreed with the change in position.

The only other change of substance is the omission of the last clause in the New York Draft text which would require specifically the furnishing of certain information, and it was felt that the obligation to afford adequate opportunity for consultation would sufficiently meet the case without giving rise to certain difficulties which the inclusion of the New York phrase caused certain delegations.

CHAIRMAN (Interpretation): Are there any other observations on article 35?

MR. C.L. HEWITT (Australia): Mr. Chairman, it has been suggested to me that in the Technical Sub-Committee the other day the words "or charges" were deleted from the relevant Article.

CHAIRMAN (Interpretation): Therefore, the representative of Australia suggests that we should suppress the words "or charges" in Article 35?

MR. C.L. HEWITT (Australia): If that is in accordance with the wording of the Technical Sub-Committee. I do not know.

MR. E. WYNDHAM WHITE (Executive Secretary): That is true.

MR. C.L. HEWITT (Australia): Then in that case I would suggest that it be deleted.

CHAIRMAN: (Interpretation): This modification being in accordance with what has been decided in the Sub-Committee on Technical Articles, I believe we can accept the suggestion to suppress these two words "or charges" in the English text.

Are there any other observations? We accept Article 35.

We pass on to Article 38. Has Mr. Brown any observations or remarks to make on this Article?

Mr. Winthrop BROWN (United States): Mr. Chairman, paragraph 1 was re-drafted to make it clear that the obligations and rights under the Charter should apply as between different Members as well as between each separate Customs territory, and also as an improvement in language.

The important change is the addition of paragraph 3(a)(b) and (c), which make it clear that a Member may enter into an arrangement leading towards a Customs Union without violating the Charter. It was recognized that it was not always possible to effect a Customs Union all at once, and that it would be desirable to recognize that the transition steps leading towards the formation of a Customs Union were a perfectly legitimate and desirable form of action. Therefore, paragraph 3 was put in to this Article.

I have one other suggestion to make, and that is that paragraph 4 should be deleted because of the fact that I understand that the Committee on Chapter IV has proposed an Article 13(C) which covers the same subject matter, and there has always been some doubt in the minds of Delegations as to where Article 38(4) really belonged in the Charter.

The Sub-Committee on Chapter IV having recommended that the subject matter be taken care of there, and that the new Article be inserted in Chapter IV for that purpose, I would suggest that

Article 38, paragraph 4, be deleted here. I may say that in making that last suggestion I speak only for my Delegation, and not for the Committee. The Committee took no position on that point.

CHAIRMAN (Interpretation): We will examine the Article paragraph by paragraph, and we will start with paragraph 1. Are there any observations?

M. Angel FAIVOVICH (Chile) (Interpretation): It is not an observation I want to make, but a declaration which I would like to see registered in the minutes.

We have in Chile a province called Magallanes, which is in a special position geographically and economically. It is very far away from the rest of the country. It has very different economic conditions, and for these reasons we have given to this province the right to certain franchises in its imports. It is not a different customs territory at all: it is a part of the country in this respect, but it benefits from certain franchises on imports. I would like to establish clearly that this paragraph 1 of Article 38, examined in the light of paragraph 5, does not at all mean that this province of Magallanes constitutes a special customs territory. It is a part of the Chilean customs territory, but it benefits from certain franchises regarding imports due to its special geographical and economic conditions.

CHAIRMAN (Interpretation): This declaration will be taken into consideration.

CHAIRMAN (Interpretation): Any other remarks on paragraph 1? Adopted.

Paragraph 2.

Mr. FORTHOMME (Belgium): (Interpretation): The remark of the Belgian Delegate does not concern the English text.

Mr. FAIVOVICH (Chile) (Interpretation): This new paragraph (b) includes the idea which we have ourselves submitted of a temporary arrangement, or initial period, for the formation of a Customs Union. It was the same idea, or a similar idea, to that suggested by the United States Delegate on the Sub-Committee, and from the fusion of these two ideas came the new text, which gives us satisfaction. We are satisfied that now this temporary period is legitimate, and that the text permits such period to be provided for.

CHAIRMAN: The Delegate of Syria.

Mr. JABBARA (Syria) (Interpretation): Mr. Chairman, this paragraph 2 is a very important paragraph for us, and it provides a certain number of dispositions with which we agree; but we see a certain number of difficulties as far as the interpretation of the text is concerned, and, for instance, first of all, in sub-paragraph (a), it speaks of advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic. Does that include customs duties, or simply facilitating formalities? Then further on, in sub-paragraph (b), it is said "the formation of the Customs Union or the adoption of an interim Agreement necessary for the attainment of a Customs Union". This is authorized, but it is perhaps not very precise where, further on, it says that such Union or Agreement "shall not on the whole be higher or more stringent than the average level of the duties and regulations." This seems to me to be not very clear and not very feasible, and I would like to have these points made clear, that we can avoid any difficulties in the future.

CHAIRMAN: I will ask Mr. Brown to advise us on this subject.

Mr. Winthrop G. Brown (United States): Mr. Chairman, to take the second point first: I think the proviso in (b), to the effect that the duties and other regulations imposed in a customs union shall not be, on the whole, more stringent than the average levels prevailing in the constituent territories, was simply to make sure that when you form a customs union it is not used as an occasion to raise the barriers around the whole new area to a level higher than the general average of the level which prevailed in the territories of the two Members. Of course, you can make them as much lower as anyone wants to.

It is an necessary precaution and I should think it would certainly not be unreasonable or limit any legitimate action for the formation of a customs union.

On the first point, as to whether (a) covers duties or not, I must admit that I am not sufficient of a technician to give an official answer to that question. It is my understanding that this clause applies to the frontier traffic as it has been internationally interpreted to mean the flow of trade back and forth across the border - I think it is within 15 miles on either side. It is a narrowly limited area of trade, so it is not a broad exception. Whether or not it applies to duties as well as to other formalities, I am not clear; I should think it probably could.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. StL. HOLMES (United Kingdom): Mr. Chairman, perhaps it might be useful if, in relation to the point made by the Syrian Delegate, I referred to the Report of the First Session of the Preparatory Committee, the wording of this particular

E/PC/T/R/PV/35

page 15 & 16

missing ~~PH~~.

made available, and when we could consider them later. We now have an instance of such a case. We have not before us the draft of Article 13(c) at present, and we have had no opportunity of considering it fully. Therefore we cannot say anything on it now.

CHAIRMAN (Interpretation): I would suggest that we now examine paragraph 4 on its own merits. Later on when we have Article 13(c), we can see if we are satisfied with paragraph 4 as it is or if we want to keep the <sup>two</sup> texts.

Mr. S. L. HOLMES (United Kingdom): Mr. Chairman, I fully appreciate the point made by the Belgian representative. At the same time I have myself had the advantage of seeing the proposed text of Article 13(c) and I might perhaps just say that I feel the suggestion made by the United States representative is a very feasible one. That may not be entirely relevant or in order in view of your ruling, but it would be, I think, in order, to make this point: that the provision for new preferential arrangements which we have in front of us here in this paper T.155, that is to say, the framework of Article 38, has always seemed to us slightly misplaced, and that for that reason alone there is a case for dealing with it in Article 13(c). Now that it is appearing in the same terms in another more appropriate place in the Charter, we should feel that what the United States representative has proposed has a merit on those grounds alone.

M. A. FRIVOVICH (Chile) (Interpretation): Mr. Chairman, I want to agree with what you have just said about examining this article on its own value. I believe that when we have examined it we can always, later on, if we are confronted with the suggested text for Article 13, see if we need to introduce some modification. My opinion is re-inforced by the text of the Report of the Sub-Committee on Chapter IV itself. In this report the Sub-Committee indicates that it cannot decide on Preferential Agreements dealing with other problems than those of Article 13, and that would mean that if these Preferential Agreements deal with points included in Article 38, which we are now discussing, it could not itself take a decision. Therefore, we must take a decision on everything that deals with Article 38, and therefore I would second the suggestion of our Chairman to examine it on its own merits here.

As this Report has not yet been approved and not yet distributed to all the Delegates, I will read the exact text of this Report which deals with this point. The text is as follows:-

"The Sub-Committee considers that it has no right to decide if it is necessary to foresee the conclusion of new Preferential Agreements for other aims, and in consequence to decide if Article 13 (c) makes Article 38, paragraph 4, superfluous".

CHAIRMAN: Monsieur Brown.

MR. W. BROWN (United States): Mr. Chairman, I think it is very difficult for us to consider this question without having the text of Article 13(c) before us - certain Members do have it and other Members do not.

The Delegate for Chile is quite correct in saying that the text of Article 13(c) refers to the possibility that special

preferential arrangements might be necessary to assist in the development programmes of a Member country, and it sets up procedures by which certain preferential agreements might be considered. That leaves open the question of whether or not a specific Article dealing with possible new preferential systems would be needed. I think our answer to that question would be that, for the most part, the most likely cases, in which such new arrangements were not covered by the Customs Provisions or the provisions of Article 14, would be related to programmes of economic development. If they are not, of course, it would be an unusual case which, I think, would be covered by paragraph 5 of Article 66 of the New York Draft, which provides for special procedures for waiving obligations of the Members undertaken in the Charter. It is for that reason that we feel that Article 38, paragraph 4 is not needed here. First, it will be covered in Article 13(c) for the main cases in which it will be likely to be involved, and second, the residue of cases could be covered by Article 66, paragraph 5.

CHAIRMAN (Interpretation): Are there any other remarks on this subject?

M. P. FORTHOUME (Belgium) (Interpretation): Mr. Chairman, I have listened to the remarks just made by Mr. Brown, and I think that the procedure suggested by you is the one to adopt so that we will not have to decide right now whether paragraph 4 should be deleted or not.

CHAIRMAN (Interpretation): I believe it is difficult to take a decision on this point without having the exact text of Article 13(C) and of Article 66. I feel we could suspend our discussion - postpone it until we are through with Chapter IV and Article 66, and then we could resume it with the exact text before us.

M. Angel FAIVOVICH (Chile) (Interpretation):  
Mr. Chairman, I would personally have preferred to follow your own suggestion, as seconded by the representative of Belgium; but if it is agreeable to the representative of the United States to postpone the discussion, I will gladly agree to do so.

CHAIRMAN (Interpretation): We now pass on to -paragraph 5. On this paragraph, I see that the Legal Drafting Committee has suggested a new text. I would ask Mr. Brown if he agrees with this text.

Mr. Winthrop BROWN (United States): Mr. Chairman, our Committee has not yet had a chance to consider, as a Committee, the proposal of the Legal Drafting Committee. Therefore, I can only speak for my own Delegation, and my Delegation's view is that the suggestion of the Legal Drafting Committee is an improvement on the text.

CHAIRMAN (Interpretation): Any remarks on -paragraph 5 as amended by the note of the Legal Drafting Committee?

M. Pierre FORTHOMME (Belgium):(Interpretation): The Belgian Delegation supports the draft presented by the Legal Drafting Committee in both versions, English and French.

CHAIRMAN (Interpretation): No remarks? The next paragraph is, therefore, accepted.

We come back to the new paragraph 4 to Article 34 - the suggestion made by the representative of the United States. You have received the text in the two languages, and I believe that everyone has had time to read it. Are there any observations or remarks?

M. Pierre FORTHOMME (Belgium) (Interpretation):  
Mr. Chairman, I support the new text presented by the United States Delegation, and I accept as a whole the English text presented. However, I would like to raise a small point here. Is it correct to say in English "to withdraw" an obligation", because if this is accurate there is a small difficulty as far as the French text is concerned.

CHAIRMAN (Interpretation): May I ask an English-speaking Delegate to answer that question?

Mr. Winthrop BROWN (United States): I think it would probably be more correct to say "to suspend obligations", because the word "withdraw" might best be left out, perhaps; or it could also be met by saying "withdraw from".

(M. LECUYER (France))(Interpreter): The remark of the French Delegate has no bearing on the English text.

CHAIRMAN (Interpretation): M. Forthomme has a better French text than was originally submitted.

M. Pierre FORTHOMME (Belgium) read the French text

M. LECUYER (Interpretation): I entirely support the new version presented by my Belgian colleague.

(Exchange of remarks in French between Delegates of Chile and Belgium, not interpreted).

CHAIRMAN (Interpretation): Do you all agree?

Mr. FORTHOMME (Belgium) (Interpretation): This applies only to the French text.

CHAIRMAN (Interpretation): Now we are in agreement on both the French and English texts.

We are now through with our agenda for to-day. Are there any other remarks?

The Meeting is ended.

The Meeting rose at 12.25 p.m.