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

COMMISSION A

Summary Record of the Eleventh Meeting held on
Wednesday, 11 June 1947 at 2.30 p.m. in the
Palais des Nations, Geneva

Chairman: M. Max Suetens

Article 34 - Emergency Action on Imports of Particular Products

Paragraph 1

Referring to the Annotated Agenda, document W.175 of 6 June, the CHAIRMAN invited the Delegate for Belgium to speak in support of his proposal as shown in the first item relating to paragraph 1.

Mr. FORTHOMME (Belgium) said that Article 34, the so-called escape clause, was of great importance and that the words which appear in the centre of the paragraph would merely serve in practice to enlarge the scope of the escape clause to the sole advantage of producers in territories receiving the benefits of a preferential system; this was an escape clause of very general character and therefore the Committee should be careful to limit strictly its applicability. He thought that the reference to preferences was contrary to the principle of providing equal means of defence for all countries.

Mr. SHACKLE (United Kingdom) said that it was an accepted principle of the tariff negotiations that reductions in preferences should be treated as equivalent to reductions in tariffs and therefore this escape clause should maintain the balance

between the concessions on tariffs and those that might be granted in respect of preferences.

Dr. COOMBS (Australia) said that the effects of the elimination of preferences could not be foreseen any more than the effects of tariff reductions, and therefore it was essential that the escape clause should refer to both preferences and tariffs; the very principle enunciated by the Delegate for Belgium requires the retention of the words which he proposed to delete.

Dr. HOLLOWAY (South Africa) discussed the bearing of the Article as a whole and said that if an escape clause is to be included in the Charter it must not be used to reduce gradually what the British Commonwealth countries may gain in exchange for giving up the preferential system on which their trade has been based in the past.

Mr. GUTIERREZ (Cuba) said that the reference to preferences in the phrase in brackets merely gave expression to a principle which had been accepted at the First Session of the Committee, but Mr. SPEEKENBRINK (Netherlands) questioned whether it was correct to refer to it as an accepted principle and asked why, if preferences are mentioned, the paragraph should not contain also a reference to quantitative restrictions and state-trading. He said that he supported the proposal of the Delegate for Belgium.

To this Mr. SHACKLE (United Kingdom) replied that the first part of the paragraph did cover quotas and state enterprise as well as tariffs and preferences and that the phrasing in brackets was required simply because the reference to "domestic producers" was not applicable in the case of injury suffered by those in other countries to which preferences are accorded.

Mr. FORTHOMME (Belgium), replying to the discussion, explained what he meant by equality of the means of defence; ordinarily the tariff negotiations between independent countries are based on most-favoured-nation treatment, but where preferences are concerned, only those countries which are permitted to participate enjoy the additional defence provided by the preferential system.

Mr. SPEEKENBRINK (Netherlands) gave further support to the proposal by emphasizing that the Netherlands Delegation was not opposed to escape clauses in general but only to those which covered particular obligations.

Dr. COOMBS (Australia) emphasized that the Australian Delegation sought no privileges for industries protected by preferences which are not enjoyed by those protected by other means: he stated that if that is recognized he would have no objection to embarking on a further discussion of the Belgian proposal.

It was agreed, therefore, that the Belgian proposal and also the suggestions of the United Kingdom and the United States Delegations on paragraph 1 as set out in the Annotated Agenda, should be referred to the Sub-Committee.

Mr. C.H. CHEN (China) proposed that the words "in respect of such product" in lines 15 and 16 should be placed before instead of after the words "to suspend the obligation" and it was agreed that this proposal, which also appeared in part of the United States proposal, should be referred to the Sub-Committee.

Paragraph 2

The CHAIRMAN called upon the Delegate for Canada to speak on his reservations recorded in the Report of the Drafting Committee regarding prior consultation.

Mr. DEUTSCH (Canada) said that the Canadian Delegation did not favour the escape clause but realized that it would be necessary to include it in the Charter; it was hoped that the clause would be used wisely and infrequently and that its use would not give rise to a series of counter-actions and to international friction; it was clearly meant to be used only in case of emergency, and in the opinion of the Canadian Delegation it should be used only after full consultation with countries that would be affected; serious emergencies can be foreseen and therefore there should usually be ample opportunity for consultation, and if this procedure is followed the counter-action of other countries is likely to be less drastic. Mr. Deutsch mentioned also the second reservation of the Canadian Delegation and urged that, if prior consultation is not required before action may be taken, the countries affected should also be permitted to take unilateral counter measures.

Mr. FORTHOMME (Belgium) said that emergencies could not always be foreseen and suggested that the second sentence should be altered to read "In critical circumstances such that any delay would cause irreparable damage such action may be taken provisionally without prior consultation"

Mr. EVANS (United States) agreed with Mr. FORTHOMME that emergencies could not be foreseen and Dr. COOMBS (Australia) also expressed the view that prior consultation would not always be possible. Dr. Coombs said he was in agreement with the spirit of the Canadian proposal, but while action without consultation would sometimes be necessary counter measures

should not be introduced without discussion as it was important that retaliatory action should be delayed.

Mr. OLDINI (Chile) suggested that possibly some procedure could be devised for informing the Organization of action that was likely to be taken; also he suggested that the Sub-Committee might be able to give some indication of the circumstances in which it would be necessary for countries to resort to emergency measures.

Mr. DEUTSCH (Canada), replying to some of the remarks that had been made by delegates, said that there was a lack of balance in paragraph 2 between the rights of those Members that took emergency action and of those that took counter measures, to the disadvantage of the latter; he thought that if it was known that countries likely to be affected would be free to take immediate counter measures, this knowledge would act as a deterrent on those countries which thought of making use of this escape clause.

Mr. BARADUC (France), said that he supported the Canadian amendment, but at the same time appreciated the remarks made by the Delegate for Belgium, and Mr. SPEEKENBRINK (Netherlands) also gave support to the Belgian proposal to amend the second sentence of the paragraph.

Mr. SHACKLE (United Kingdom) expressed the view that it would be necessary for the Committee to reach a compromise on the wording of paragraph 2. He thought that thirty days was not too long a period to require before counter measures might be applied, but he thought it would be necessary for the Sub-Committee to examine the wording of the paragraph with a view to making it clear whether the country wishing to take counter action need wait for an expression of opinion by the Organization.

Mr. RODRIGUEZ (Brazil) said that his government had found by experience that it is necessary upon occasion to take some action in order to avoid serious damage to industries; there was often no opportunity for consultation. He said that his Delegation had recorded two reservations to Article 17, and he suggested that the Sub-Committee to be appointed might consider whether the action proposed by his Delegation in connection with Article 17 could be taken under Article 34.

Dr. HOLLOWAY (South Africa) said that he could not support the first proposal of the Canadian Delegation because governments could not be expected to disclose difficulties which they foresaw for the future, but on the second point he could agree because it was to be expected that pressure groups would frequently urge their governments to take emergency action under this Article and if it was known that immediate counter-action could be taken this would act as a deterrent.

Mr. ADARKAR (India) agreed with those Delegates who had expressed the opinion that governments could not be expected to foresee the emergencies which might give rise to the need for action under this Article. He drew attention to the provisions of Article 13 and said that the procedure for the introduction of emergency measures should be the same in each case as he could see no justification for the distinction which was drawn between the two Articles as at present drafted. He suggested that the Sub-Committee should examine this question.

Mr. GUTIERREZ (Cuba) and Mr. OLDINI (Chile) supported the Canadian proposal; the latter said that he could not agree to a compromise solution.

Mr. EVANS (United States) thought that several delegates had attached more importance than was needed to the Article; it

was meant purely for emergencies; the United States Delegation recognized that the wording was imperfect and was prepared to consider amendments. In particular, he thought the paragraph needed clarification as to whether a Member which was faced with an emergency situation as a result of action taken by some other Member was entitled to the same privileges as the other Member in taking emergency action, or whether such action must be regarded as counter-action.

Mr. COLBAN (Norway) said that his Delegation was prepared to accept paragraphs 2 and 3 without alteration, and Mr. CHEN (China) said that he would accept paragraph 2 without change.

Summing up the discussion, the CHAIRMAN said that there appeared to be need for a compromise and that therefore the proposals standing in the names of the Delegations for Canada, Chile and Cuba and also the proposal of the Belgian Delegate should be referred to the Sub-Committee so that a further effort might be made to obtain a satisfactory wording.

Paragraph 3

The CHAIRMAN stated that the proposals of the Belgian and United Kingdom Delegations should be referred to the Sub-Committee.

The proposal of the United States Delegation to delete the words "substantially equivalent" in lines 12 and 13 and also the last sentence was discussed briefly. Mr. SHACKLE (United Kingdom) said that he had been inclined to support the proposal, but after hearing the discussion on paragraph 1 and 2 he had come to the conclusion that it was better to make no change. Mr. EVANS (United States) said that the proposal to delete the words "substantially equivalent" was consequential upon the more important proposal that the last sentence should be omitted.

Mr. DEUTSCH (Canada) said that he would prefer to retain the words "substantially equivalent" and Mr. SPEEKENBRINK (Netherlands) said that he was opposed to any alteration.

This proposal was also referred to the Sub-Committee.

Dr. HOLLOWAY (South Africa) suggested that the Sub-Committee should be asked to consider the bearing of the word "which" in the third last line.

Mr. WEBB (New Zealand) expressed the opinion that the arrangement of sixty days and thirty days for the taking of counter-action might have an effect the reverse of that intended, resulting in ill-considered action because of the shortness of the time allowed.

The meeting rose at 6 p.m.