

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENTNon-Governmental OrganizationsSummary Record

Meeting of the Consultative Committee with the Representatives of the International Chamber of Commerce held on Friday, 18 July, 1947, at 4.30 p.m. in the Palais des Nations, Geneva.

Present: M. Dieterlin
Mr. John W. Evans
Mr. C.L. Hewitt
Mr. Olav Hogna
M. Royer

Representatives of the International Chamber of
Commerce:

Mr. John R. Minter
Dr. M.A. Heilperin

In the absence of the CHAIRMAN and VICE CHAIRMAN, the EXECUTIVE SECRETARY, Mr. Wyndham White, presided. The Committee proceeded to consider the matters which the Representatives of the ICC had requested an opportunity to discuss.

1. The question of early release of the third Draft Charter so that distribution can be made to national committees of the I.C.C. and their comments collated in time for preparation of a report to be submitted to the World Conference.

Mr. Minter introduced the item by drawing the attention of the Committee to the text of the following resolution (No.6) adopted by the ICC at its Congress in Montreux in June, 1947.

"In order that it may in the future discharge effectively the responsibility of its consultative status with the Economic and Social Council, the United Nations and associated organizations, the International Chamber of Commerce hopes that it may be allowed to have an adequate supply of copies of documents with which it is concerned for supply to National Committees at the earliest possible date and with adequate time for consultation."

In commenting on this resolution, Mr. Minter explained that before submitting to the World Conference any observations on the third draft of the Charter the ICC requires full consultation with all of its national committees in order that the observations may be representative of their views. Mr. Minter urged the Preparatory Committee to make available to the ICC the texts of individual chapters of the Draft Charter as soon as the work on each is completed, to be followed by the release to the ICC of the full text of the Charter and commentary as soon as work on those documents has been completed.

The EXECUTIVE SECRETARY explained the procedure which was being followed by the Preparatory Committee in the preparation of the text of the Charter. He indicated that during the present Session the text of the chapters and individual articles must pass through numerous stages, including the initial discussion in commission, the sub-committee stage, the further consideration by a commission, the examination by a legal drafting committee, and, finally, the review of the whole text by the Preparatory Committee. In these circumstances it would obviously be difficult to determine when the text of a chapter or of an article had been finally adopted by this Session of the Preparatory Committee. Nevertheless, he proposed that the Consultative Committee might recommend to the Preparatory Committee that the ICC and other interested non-governmental organizations in Category "A" be provided with the mimeographed texts of all or part of the Charter as soon as the Preparatory Committee indicates its final approval of the text. The EXECUTIVE SECRETARY pointed out that, as would be appreciated from his earlier observations, the adoption of such a proposal by the Preparatory Committee would probably not result in the release of texts to the ICC in the immediate future but would at least make possible the provision to the ICC of mimeographed texts without the

delay that would be involved in waiting for the printed texts. The Committee agreed to make such a proposal to the Preparatory Committee.

Concerning the remaining items which the ICC Representatives desired to discuss, the EXECUTIVE SECRETARY remarked that the Secretariat had prepared informal notes relating to the original ICC comments on Chapter VII and Article 18 which had been circulated to the meeting. The EXECUTIVE SECRETARY suggested that in the discussion of these two items the Secretariat notes might constitute an informal agenda without implying necessarily any commitment by the members of the Consultative Committee in respect of the contents of those notes. (The Secretariat notes are annexed to this summary record).

2. Commodity Agreements - Chapter VII

Concerning the first point listed in the Secretariat notes on this topic, relating to the expansion of world trade, the EXECUTIVE SECRETARY pointed out that the present text of subparagraphs (b) and (e) in Article 48 would appear to place the appropriate emphasis on the objective of expanding consumption and production. Dr. Heilperin indicated that while these changes were welcomed, he thought it might be desirable to state more explicitly in Chapter VII that commodity agreements should "serve the general purpose of securing an orderly expansion of world trade", as had been suggested in the observation submitted by the ICC in Document E/PC/T/44. A member of the Committee remarked that such a statement, applying to the entire Charter, was already included in Article 1 which contains the general purposes of the Organization. He added that the provisions contained in Chapter VII for including both consuming and producing countries in the operation of commodity agreements might reasonably be expected to act as an additional deterrent to the establishment of unduly restrictive commodity arrangements. Dr. Heilperin

acknowledged that the present text of Chapter VII appeared to represent a considerable advance over the earlier drafts in the direction of ensuring, so far as possible, that commodity agreements should not be of an unnecessarily restrictive character, but reiterated his conviction that an explicit statement along the lines previously indicated would be desirable.

The Representatives of the ICC indicated that, as observed in the Secretariat note, the desire of the ICC to avoid complete reliance on the cumbersome procedure of study groups and commodity conferences would appear to have been met by the revisions made in the present texts of Articles 50 and 52.

Concerning the third point listed in the Secretariat notes, Dr. Heilperin stated that the revised text, although possibly representing an improvement over the earlier versions, still failed to indicate sufficiently clearly the range of commodities to which inter-governmental commodity agreements should be confined. He felt that in the new text there remained the possibility that inter-governmental commodity agreements might be extended considerably beyond primary commodities especially in view of the new contents of paragraphs 2 and 3 of Article 47. He inquired whether the reference in paragraph 3 to "a commodity which does not fall precisely under paragraphs 1 or 2" might not be open to a considerable number of interpretations. It was pointed out by a member of the Committee that in the report of the Sub-committee dealing with Chapter VII this language was interpreted as excluding highly manufactured goods from the scope of inter-governmental commodity agreements while providing for the possibility that borderline cases between primary and non-primary commodities might be subject to the same difficulties as primary commodities and, hence, might properly be the subject of an inter-governmental commodity agreement in the same manner as a primary commodity.

A member of the Committee indicated that in his judgment the present language would exclude any commodities which did not possess the economic characteristics of a primary commodity. Other members of the Committee indicated their agreement with this view. Dr. Heilperin suggested that to make these points clear the text might be revised to indicate: (a) the production and marketing characteristics which distinguish commodities included within the scope of the chapter; (b) that highly manufactured goods are specifically excluded; and (c) that agreements relating to the commodities covered by this chapter might be made between private business entities in the different countries and not only between governments.

The EXECUTIVE SECRETARY pointed out that, concerning Dr. Heilperin's first suggestion, a certain number of criteria appeared to be provided already in Articles 46 and 53 for determining whether or not a commodity met the requirements for inclusion under the provisions of the chapter. Dr. Heilperin suggested that these criteria might be elaborated further in the text or in the commentary. A member of the Committee questioned whether the specific statement suggested by Dr. Heilperin in his second point was required or would achieve his purpose since its inclusion might imply that as a general rule manufactured goods, unless they were "highly manufactured", could be regarded as coming within the chapter. This member suggested that the present language provided a necessary flexibility without extending the category of commodities unduly. Concerning Dr. Heilperin's third suggestion, a Member of the Committee questioned whether the introduction of a statement concerning the making of non-restrictive commodity agreements between private enterprises was really necessary, since presumably business enterprises could already make such arrangements (since they would not be of a restrictive character and hence would not come under Chapter VI) without any

specific provision. After further discussion of these points Dr. Heilperin indicated that he felt that the present text did not meet the points made by the ICC relating to non-primary commodities and to the distinction made between arrangements among governments and arrangements among private business enterprises in Chapters VI and VII.

Concerning the fourth point listed in the Secretariat notes relating to Chapter VII the EXECUTIVE SECRETARY questioned whether the limitation of such agreements to a specified period of short duration was reasonable since the agreements would have been made in the first instance because of the existence of certain special conditions and there could be no assurance that those special conditions would have disappeared by the end of the specified period. In any event he felt that the present provisions for review at the end of a period provided protection against an unnecessary extension of such arrangements and recognized that such agreements were not regarded as permanent institutions unless, of course, the conditions which they were designed to meet persisted. He noted that the present text encouraged measures designed to remedy the conditions which rendered the commodity agreements necessary, particularly in sub-paragraph (d) of Article 54. Dr. Heilperin remarked that the ICC was not opposed in principle to the extension of any necessary agreements but felt that the emergency character of the agreements should be explicitly emphasized and that the initial period and the subsequent intervals between reviews should be as short as possible in order to avoid any impression of permanency.

3. Resolution of the Congress of the ICC on Samples and Advertising Matter.

Mr. Minter read to the Committee the following resolution which had been adopted at the Montreux Congress (Resolution No.22):

"The International Chamber of Commerce recommends that a special provision should be included in the Charter of

the International Trade Organization, requesting the member Governments to grant particularly favourable treatment and, where appropriate, total exemption from customs duties, quantitative and other restrictions to any article not intended for sale but exclusively designed for use as an instrument of advertising for commerce or travel. There should also be special facilities for commercial travellers and their samples. Great care should be taken in reaching a satisfactory definition of sample and other instruments of commercial propaganda. The I.C.C.'s Committee on Customs Technique will take this up urgently, with a view to preparing detailed recommendations for submission by the I.C.C. to the World Conference on Trade and Employment."

Mr. Minter requested that the Preparatory Committee should take note of this resolution. He indicated that the detail recommendations mentioned in the resolution were not yet available but would be forthcoming shortly.

4. Basis of Ad Valorem Valuation (Article 13).

The EXECUTIVE SECRETARY drew attention to the notes by the Secretariat on this subject. He explained that the text to which the notes referred was still in a fluid state and had not yet been approved by the Commission. Dr. Heilperin remarked that without the present text of the article before him he could not indicate to what extent the views of the ICC were satisfied, but from the Secretariat's notes he judged that the general trend of the discussion was in a direction which would be welcomed by the ICC.

He observed that, in addition to the comments submitted in E/PC/T/44, the ICC had on previous occasions published suggestions relating to valuation which might be of interest to the Preparatory Committee. He referred in particular to Document No. 10 of the 1937 Congress and to pages 28 - 30 of Brochure No. 101 dated June, 1946.

5. Code of Foreign Investment.

The Representatives of the ICC drew attention to the brochure on "Foreign Investments and Economic Expansion" (Brochure No.107)

which had previously been circulated to Members of the Preparatory Committee at the request of the ICC.

The EXECUTIVE SECRETARY remarked that questions relating to investment were to be considered primarily by the Sub-committee on Chapter IV but that, in view of the complexity of the various subjects with which that Sub-committee had to deal, the discussion on the several proposals relating to investment had not yet commenced. The attention of the Sub-committee would be drawn to the paper submitted by the ICC and the Sub-committee would be informed of the importance which the ICC attached to its proposals relating to this subject.

The meeting rose at 6.00 p.m.

ANNEX 1.

Notes by the Secretariat on the Memorandum by the International Chamber of Commerce (E/PC/T/44) regarding Chapter VII.

The following notes review, in the light of the new text of Chapter VII, some of the principal points raised by the International Chamber of Commerce on the New York text. (Unless otherwise stated, Article numbers refer to new text).

(1) Expansion of world trade:

The I.C.C. suggested that Chapter VII should carry an explicit endorsement of the principles of an orderly expansion of world trade. Although the new text does not in fact do this, it will be noted that there is a distinct shift in emphasis towards expansion and away from restriction. In particular, attention may be drawn to Article 52 which now explicitly provides for agreements involving the controlled expansion of production and trade, e.g. in connection with programmes sponsored by the Food and Agriculture Organization.

(2) Procedure:

The I.C.C. suggested that the procedure of Study Groups and Commodity Conferences might prove too cumbersome to be effective. Under Article 50 the provisions in this respect have been clarified, and it is now clearly provided that the Study Group stage may be short-circuited at the request of Member countries whose interest in the commodity represents a substantial part of world production, consumption or trade. It will also be noted that under paragraph 6 of Article 52 (53(a) in the New York text) provision is still made for direct action by Members to conclude an agreement in case of undue delay in the Study Group or Conference.

(3) Circumstances governing the use of Commodity control Agreements:

The I.C.C. proposed that paragraph (c) of Article 52 in the New York text, regarding regulatory agreements for non-primary commodities, should be deleted. This has been done. There was general agreement, however, that the possibility should not be entirely excluded that inter-governmental agreements might be necessary for certain non-primary commodities. Under paragraph 3 of Article 47 it is therefore provided that, in exceptional circumstances, the Organization may determine that the principles and provisions of Chapter VII, together with any additional requirements it may establish, shall apply to inter-governmental agreements regarding commodities which do "not fall precisely" under the definition of a primary commodity. The use of the term "not fall precisely" is intended to exclude agreements relating to highly manufactured goods. This constitutes a substantial limitation of the original provision in sub-paragraph (c) of Article 52 of the New York text.

(4) Initial Terms, Review and Renewal:

(a) The I.C.C. wished it to be made clear that commodity agreements should be of a temporary, emergency character, and drew attention to what they regarded as an inconsistency in Article 55 of the New York text in that it permitted renewal of regulatory agreements after the initial period of five years. Members of the Preparatory Committee feel, however, that in the case of certain commodities, commodity control agreements would not necessarily solve the special difficulties within the initial period of five years, although participating countries should, of course, do all they can, within the time limits, towards solution of the problems (see Article 54 (d)). For this reason it is regarded as necessary to provide for the possibility of renewing an agreement after its initial term. It should be emphasized that a commodity control agreement may only be used in the first instance, in the strictly limited circumstances described in Article 53, and may then only be renewed if those circumstances still apply (see the second sentence of paragraph 1 of Article 56). These provisions should serve to ensure that commodity control agreements retain their emergency character and are only continued over an extended period if absolutely necessary.

(b) The I.C.C. pointed out that it was not made clear with whom the decision rested as to whether an agreement had succeeded or failed. It is now made clear in paragraph 2 of Article 56 that it will be for the Organization to decide whether the operation of an agreement has failed substantially to conform to the principles of Chapter VII.

ANNEXE 2

Notes by the Secretariat on the Sections of the
Memorandum of the I.C.C. (E/PC/T/44) relating to
Article 18

The comments of the International Chamber of Commerce on the New Yorks draft of Article 18 (see E/PC/T/44, pages 25 and 26) have been re-read in the light of the present draft of Article 18 which is still in the process of being examined by Commission A.

The ICC stated that "the only purpose of drawing up a set of international rules on this (tariff valuation) question is to supply the customs officer with a simple rule-of-thumb method for assessing duties, and to reduce to a minimum uncertainty and vexatious delays and disputes for the trader". The ICC considered that the New York draft fell short of both of these objectives and proposed two possible remedies: (i) to retain only the first paragraph of the Article and leave it to the ITO to work out a satisfactory standard system of valuation; or (ii) to amend the remaining paragraphs of the Article.

In the discussions of the Sub-committee on Article 18 there was an insistent demand that the Charter should provide fairly precise rules for the determination of dutiable values, and the proposal that this problem should be left with the ITO was rejected. It would appear that one of the considerations in reaching this decision was the desire to establish rules which could be incorporated in the General Agreement on Tariffs and Trade as a protection for the tariff concessioners which are currently being negotiated. Thus the first proposal of the ICC would probably not be acceptable to the majority of the Preparatory Committee. Nevertheless, the first paragraph of the Article states that the Organisation "may investigate" the bases and methods for tariff valuation and make recommendations to members. Therefore the ICC may be encouraged to continue its own investigations of this problem and might submit its findings to the ITO under arrangements for consultation which may be made under Article 81(3).

The second proposal of the ICC would appear to be largely satisfied by the present paragraphs 2 (a) and 2 (c). Sub-paragraph (i) of 2 (a) in some degree meets the ICC's demand that the value for duty purposes shall be based on actual value. This is followed by sub-paragraph (ii) which gives a definition of actual value.

On the question of currency conversions, the ICC point appears to be fully met; the ICC recommends the use of the official rate resulting from the parity fixed by the IMF. This is now in fact provided for in sub-paragraph (i) of 2 (c).