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

CHAPTER V

Articles 34, 35 and 38

Report by the Sub-Committee for submission to Commission A on Monday, 4th August, 1947.

Articles 34, 35 and 38, dealing respectively with Emergency Action on Imports of Particular Products, with Consultation and Nullification or Impairment, and with Territorial Application and Customs Unions, were discussed by Commission A on 11th, 12th and 13th June, and were referred to the Sub-Committee on Articles 14, 15 and 24. In order to facilitate the study of these three Articles a series of meetings was arranged under the Chairmanship of the Delegate for the United States, Mr. Winthrop G. Brown. The other members of the Committee were the Representatives of the Australian, Belgian, Chinese, Cuban, Norwegian and United Kingdom Delegations. Four meetings were held from 18th-22nd July and were attended by several delegates not members of the Sub-Committee.

The Sub-Committee reviewed all the proposals put forward during the debates in Commission A, as recorded in E/PC/T/W/224, and many of them were withdrawn by the Delegations which had sponsored them. The important amendments of substance, recommended by the Sub-Committee, may be described briefly as follows:

In Article 34 the second paragraph has been amended so as to restrict provisional emergency action without prior consultation to critical circumstances such that a delay would cause damage which it would be difficult to repair.

In the third paragraph a corresponding amendment has been introduced to allow a Member, whose producers of the products affected by such action are caused or threatened with serious injury such that delay would cause damage which it would be difficult to repair, to suspend throughout the duration of the ensuing consultation such obligations or concessions as may be necessary to prevent or remedy the injury.

The second amendment of substance in Article 34 is the alteration of the period of 60 days to 90 days as the time allowed for Members affected by the emergency action of another Member to suspend substantially equivalent obligations or concessions.

In Article 35 the first paragraph has been retained without alteration, except for the deletion of the last phrase calling upon a Member to provide information when representations are made by another Member with respect to the operation of customs regulations, etc. It was decided to delete this requirement rather than to add

a qualification that the submission of such information is not to prejudice the legitimate business interests or private or state enterprises; it was thought that the requirements of "sympathetic consideration" and "adequate opportunity for consultation" would be sufficient to ensure amicable settlement of disputes.

In dealing with paragraph 2 the Sub-Committee took into account the views expressed in Commission A in favour of the transfer of this paragraph to a later part of the Charter. The Sub-Committee were unanimously in favour of such transfer and prepared a revised text, based on the draft of the Australian Delegation, for incorporation in Chapter VIII.

Paragraph 1 of Article 38 was re-written in order to clarify the meaning of customs territories in respect of the application of the Charter.

Finally, sub-paragraph (b) of paragraph 2 was revised, and a new sub-paragraph was added to paragraph 3, in order to provide for interim agreements between Members leading to the attainment of customs unions; such interim agreements must include a definite plan and schedule for the attainment of a customs union within a reasonable length of time, and the plan and schedule proposed may be disapproved by the Organization if it determines that they are not likely to result in a customs union within a reasonable period of time.

The text recommended by the Sub-Committee follows:

Article 34.

Emergency action on imports of particular products

1. If, as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products, or, in the case of a product which is the subject of a concession with respect to a preference, is being imported under such conditions as to cause or threaten serious injury to producers in a territory of a Member which receives or received such preference at the request of such Member's government, the Member shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

2. Before any Member shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference the notice shall state the Member government which has requested the action. In critical circumstances, such that the delay would cause damage which it would be difficult to repair, such action may be taken provisionally without prior consultation, Provided that consultation shall be effected immediately following upon the taking of such action.

3. If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, or, in the case of a Member at whose request action has been taken by any Member in connection with a preference, the trade of that Member, of such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In the event of action being taken provisionally without prior consultation in accordance with the provisions of paragraph 2, a Member whose domestic producers of products affected by the action are caused or threatened with serious injury such that delay would cause damage which it would be difficult to repair shall be free to suspend, throughout the duration of the consultation, such obligations or concessions as may be necessary to prevent or remedy the injury.

Article 35

Consultation

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange regulations, subsidies, state-trading operations, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally all matters affecting the operation of this Chapter.

Article 38

Territorial application of Chapter V - frontier traffic - Customs unions

1. The rights and obligations arising under this Chapter shall be deemed to be in force between each and every territory which is a separate customs territory and in respect of which this Charter has been accepted by a Member in accordance with paragraph 4 of Article 88.

2. The provisions of Chapter V shall not be construed to prevent:

(a) Advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or

(b) The formation of a customs union or the adoption of an interim agreement necessary for the attainment of a customs union, Provided that the duties and other regulations of commerce imposed by or any margins of preference maintained by any such union or agreement in respect of trade with members of the Organization shall not on the whole be higher or more stringent than the average level of the duties and regulations of commerce

(b) (Contd.)

or margins of preference applicable in the constituent territories prior to the formation of such union or adoption of such agreement, and Provided further that any such interim agreement shall include a definite plan and schedule for the attainment of such a customs union within a reasonable length of time.

3. (a) Any Member proposing to enter into a customs union shall consult with the Organization and shall make available to it such information regarding the proposed union as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

(b) No Member shall initiate or maintain any interim agreement under the provisions of paragraph 2(b) if, after a study of the plan and schedule proposed in such agreement, the Organization finds that such agreement is not likely to result in such a customs union within a reasonable length of time, nor shall the plan or schedule be substantially altered without consultation with the Organization.

4. The Members recognize that there may in exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Any such exception shall conform to the criteria and procedures which may be established by the Organization under paragraph 3 of Article 66.

5. For the purpose of this Article a customs territory shall be understood to mean any territory within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such territory. A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.