

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.REPORT OF SUB-COMMITTEE ON "RELATIONS WITH NON-MEMBERS"
(ARTICLE 36)I - INTRODUCTION

1. At the Thirteenth Meeting of Commission A, a special Sub-committee was appointed to consider the question of relations with Non-Members. The Sub-committee was given "full liberty to analyse the problem and to make to the Commission any suggestions or recommendations that the Sub-committee considers appropriate" (E/PC/T/A/PV/13, pages 11-12). Representatives of the following delegations were appointed as members of the Sub-committee :

Brazil
Czechoslovakia
France
Netherlands
United Kingdom
United States of America

2. M. Baraduc (France) was elected Chairman of the Sub-committee.

3. The Sub-committee held seven sessions. Representatives of several delegations, not members of the Sub-committee, attended its meetings. In particular, representatives of Canada, China and New Zealand participated in the discussions on points of special interest to them. A representative of the International Monetary Fund also participated.

4. The Sub-committee examined the advantages and disadvantages in deferring the drafting of any provision concerning relations with Non-Members until the World Conference, or even until after the establishment of the Organization, but concluded that, in the absence of agreement on a single text, it would be advisable, and in accord with the intention of the Commission, to prepare several draft texts of the Article for consideration by the World Conference. Accordingly, the Sub-committee has drafted texts, identified as versions "A", "B" and "C" in the Annexures to this Report, representative of three different points of view. The Sub-committee has deliberately avoided an extended discussion of the merits of one point of view as against another, since it was felt that such discussion should be undertaken only when the time comes to establish a text for incorporation in the Charter. It was apparent, however, from discussion in Sub-committee that each of the drafts was supported by one or more Delegations.

II - RECOMMENDATIONS

5. The Sub-committee recommends that these three texts should be transmitted by the Preparatory Committee to the World Conference, without expressing at this stage any judgment concerning the merits of one proposal as against another, in order to assist the World Conference in determining, in the light of all relevant

circumstances, the text to be incorporated in the Charter governing relations with Non-Members. Some question was raised in the Sub-committee as to the status of a Member of the United Nations if it should fail to become a Member of the Organization and to the status of a country not eligible for membership in the Organization. The Sub-committee suggests that the World Conference may wish to seek expert opinion as to whether, under these circumstances, any of the drafts would be in conflict with the obligations of Members of the United Nations.

III - OBSERVATIONS RELATING TO OTHER PARTS OF THE CHARTER

6. In the course of its discussions, the Sub-committee has considered in a preliminary manner the relationship between each of the several draft texts of this Article and other provisions in the Charter. The Sub-committee, accordingly, submits the following observations :

(a) Preferential Arrangements (Articles 14 and 24).

The texts of versions "A" and "B" as now drafted would not prevent the continuation of preferential arrangements, to the extent and of the nature permitted in Article 14, even if Members and Non-Members of the Organization were members of a common preferential system. Version "C" would allow a similar measure of preferential treatment, except that it would not allow the granting of a reduction in the preferential rate accorded by a Member to a Non-Member.

(b) Unilateral Tariff Reductions.

Since paragraph 3 of version "C" refers only to the extension of tariff reductions resulting from negotiations among Members (i.e. reductions in tariffs effected by a Member pursuant to Article 24), this version of the Article would not prevent a Member from applying to the trade of all countries, including all Non-Member countries, a tariff reduction made unilaterally for domestic reasons. The other versions of the Article, also, would not prevent the application to the trade of all countries of such unilateral tariff reductions.

(c) Subsidies (Article 30)

The Sub-committee agrees with the view of the Sub-committee on Article 30 that the new provision relating to the case of an export subsidy granted by a Non-Member (paragraph 4 of Article II of Article 30 in E/PC/T/124) does not affect the general question of relations with Non-Members.

(d) Inter-governmental Commodity Arrangements (Chapter VII).

It is the view of the Sub-committee that the provisions incorporated in the text of Chapter VII concerning participation by Members and Non-Members in commodity agreements are consistent with each of the three texts proposed for Article 36, and that none of these texts would prevent the sort of relations with Non-Members envisaged in the texts of Articles 50 and 51 as approved by Commission B (E/PC/T/W/228 and E/PC/T/123).

(e) "Non-Member Element" in Exports of a Member.

The Sub-committee's attention was drawn to the possible need for some provision concerning the "Non-Member element" in goods exported by a Member and concerning other forms of indirect trade between Members and Non-Members. It is the view of the Sub-committee that it would not be practicable to make specific provisions for such cases in the text of the Article but that the appropriate treatment of such a "Non-Member element" or other form of indirect trade must be determined by the Member country concerned in accordance with its normal administrative practices insofar as such matters are not already covered in other sections of the Charter.

IV - OBSERVATIONS RELATING TO OTHER AGREEMENTS,
CONVENTIONS AND TREATIES.

7. Concerning related provisions in other agreements, conventions and treaties, it appears to the Sub-committee that the precise effect of the adoption of one or another of the proposed versions of Article 36 on the participation of Members of the Organization in such arrangements along with Non-Members can not be determined without a more detailed examination of their provisions. In general, it is the intention of the Sub-committee that none of the proposed texts should present obstacles to full participation by Members and Non-Members in arrangements which are not inconsistent with the purposes of the Organization. In particular cases, if any question were to arise, latitude is provided for determining the propriety of continuing such relationships in the light of the circumstances existing at that time.

8. In the case of version "C" it was pointed out particularly that the language of that draft does not require the termination of any arrangement unless the terms of the arrangement would entitle a Non-Member to receive, without giving specific compensation, benefits newly created by Chapter V of the Charter.

9. In versions "B" and "C" of the draft Article a paragraph has been included to cover the special cases of the Peace Treaties and the Specialized, or similar, Agencies, if the Legal Drafting Committee considers that those cases would not be clearly excepted in the absence of such an explicit exception. A similar provision would seem to be unnecessary in version "A" to accomplish the same purpose.

10. Concerning treaties of a general or political nature, the Sub-committee did not consider it practicable to devise categories of such treaties or arrangements which could be excepted in advance from the provisions of this Article, although it was recognized by the Sub-committee that there are economic provisions in such general or political treaties which would not be affected by the provisions contained in the present drafts of the Article. The extent to which such treaties or arrangements involving Members and Non-Members would be affected clearly depends on which version of the Article is finally adopted. It was noted by the Sub-committee that under all proposed versions provision is made for determining whether any relevant economic provisions in such treaties or arrangements are consistent with the obligations entailed in membership in the Organization.

V - MISCELLANEOUS OBSERVATIONS

11. The Sub-committee has taken note of the proposal approved by the Sub-committee on Chapters I, II and VIII for admitting to the Organization in some capacity certain autonomous customs territories which are not fully responsible for the formal conduct of their own diplomatic relations (see paragraph 3 of Article 65 as proposed by the Sub-committee on Chapters I, II and VIII - E/PC/T/139). In the event that this proposal of that Sub-committee is adopted, the present Sub-committee considers that such territories when admitted to the Organization would be regarded for the purposes of this Article as being in the same category as Members.

12. The Sub-committee has not attempted to deal with the particular case of the occupied territories.

13. No attempt has been made to determine whether the Article dealing with "Relations with Non-Members" should remain in Chapter V or should be transferred to some other Chapter of the Charter.

14. The Sub-committee has recognised fully that, in drafting the present texts, as in the drafting of other provisions in the Charter, the primary objective should be to secure the establishment of an effective Organization with the broadest possible Membership.

VERSION "A"

Article 36

Relations with Non-Members

1. Nothing in this Charter shall preclude any Member from concluding or maintaining commercial treaties or maintaining economic relations with non-Members provided that no Member shall seek preferential export or import duties or taxes or exclusive advantages in its trade with any non-Member.

2. If a substantial part of any Member's foreign trade is with non-Members, such Member shall be entitled to suspend the application of any of the provisions of this Charter provided that their execution causes or threatens to cause a serious injury to its legitimate economic interests.

3. Any Member shall afford the Organization and directly affected Members an adequate opportunity to consult with it in respect of its action and of the best way which would enable the Member concerned to safeguard its interests without prejudicing the general purposes and objectives of this Charter and the legitimate interests of the above-mentioned Members.

If no adjustment can be effected, the Member concerned may withdraw from the Organization at any time by written notice addressed to the Director General either on its own behalf or on behalf of a territory which is at the time self-governing in respect of matters provided for by this Charter, giving reasons therefor. This withdrawal shall become effective on the date such notice is received. The Director General shall immediately notify all other Members.

VERSION "B"

ARTICLE 36

Relations with Non-Members

1. No Member shall seek exclusive or preferential advantages for its trade with any non-Member.
2. Any Member wishing to maintain or enter into a commercial agreement with a non-Member which extends or would extend to the non-Member any of the benefits of Chapter V of this Charter or any of the tariff reductions effected by the Member concerned in pursuance of Article 24 of the Charter shall seek the approval of the Organization for such a course, provided that no Member shall be required to terminate any such existing agreement until it has received written notification from the Organization of its decision in respect of that agreement in accordance with the procedures laid down in this Article.
3. In deciding whether it should grant approval in respect of the question referred to in paragraph (2) of this Article, the Organization shall have regard to the following considerations:
 - (a) whether or not the agreement concerned does or would substantially injure the interests of other Members;
 - (b) whether or not the termination of an existing agreement of this nature would substantially injure the interests of the Member concerned;
 - (c) whether or not the expansion of international trade and the promotion of the purposes of the Organization as laid down in this Charter would be adversely affected if the agreement were maintained or put into effect.

4. A Member may apply to the Organization at any time for approval of any agreement which it proposes to conclude with a non-Member and to which the provisions of paragraph 2 of this Article apply, but, in the case of any such agreement which exists at the date on which this Charter comes into force for that Member, application for approval under the provisions of paragraph 2 of this Article shall be made within a period of one year from that date.

5. Within 60 days of its receipt of written notification of a decision by the Organization disapproving any agreement to which the provisions of paragraph 2 of this Article apply, a Member either shall inform the Organization of its acceptance of the decision, in which case the Member shall take steps to terminate any such existing agreement and shall not extend or continue to extend to the non-Member the benefits to Members deriving from the negotiations completed in accordance with Article 24 of this Charter, or, if it is unwilling to accept the decision of the Organization, may give notice in writing to the Director-General of its withdrawal from the Organization, such withdrawal to become effective 60 days after such notice is given.

6. Nothing in this Article shall be interpreted as requiring the withdrawal of any Member from membership in other inter-governmental organizations of the type described in Article 57 of the Charter of the United Nations or as over-riding any of the economic provisions in the treaties of peace between the Allied and Associated Powers and the states which were their enemies during the Second World War. 7 (1)

(1) The Sub-Committee suggests that the necessity of including this paragraph be examined by the Legal Drafting Committee.

47. For the purposes of this Article, the term non-Member shall mean a country which, although qualified to become a Member, has not become a Member or has withdrawn from the Organization.] (2)

(2) The Preparatory Committee calls the attention of the World Conference on Trade and Employment to this particular paragraph, the inclusion of which would render the provisions of the Article not applicable to countries which are not invited to join the Organization. The World Conference may wish to consider whether this provision should be retained or deleted in the light of the resolution regarding Spain which the General Assembly adopted on 12 December, 1946.

VERSION "C"

Article 36

Contractual relations with non-Members

Treatment of the Trade of non-Members

1. No Member shall seek preferential advantages from any non-Member so as to result, directly or indirectly, in the application by such non-Member to any Member of measures which, if applied by a Member, would be inconsistent with the provisions of this Charter.
2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member is or would be contractually entitled to any of the benefits provided to Members by virtue of Chapter V: Provided, That, with respect to any such existing agreement, the Organization shall release any Member from the provisions of this paragraph if it finds that the effect of termination of the agreement would be more detrimental to the interests of Members as a whole than its continuation.
3. No Member shall, except with the concurrence of the Organization, extend to the trade of any other country, which, although qualified to do so ⁽¹⁾ has not become a Member or has withdrawn from the Organization any of the reductions in tariffs effected by such Member pursuant to Article 24, or extend to such country any reduction in a preferential tariff rate, even though such reduction would be permitted under the terms of Articles 14 and 24.

(1) The Preparatory Committee calls the attention of the World Conference on Trade and Employment to the fact that if the words "although qualified to do so" are not included, this provision would deny most-favoured-nation treatment to any country not invited to join the Organization. The World Conference may wish to consider whether this result clearly reflects the purpose of the General Assembly when it adopted the resolution regarding Spain on 12 December 1946.

4. The provisions of paragraphs 2 and 3 of this Article shall become effective for any Member upon the expiration of one year from the day on which this Charter enters into force with respect to such Member: Provided, That, this period may be extended by the Organization, in respect of the relations of any Member with any non-Member, for such further periods as the Organization may prescribe. At any time before the expiration of any such period, a Member may request the Organization in writing for such an extension, in which event the period will be considered to be extended until a reply is received from the Organization. If the Organization disapproves the extension requested, the Member shall then be free, not later than sixty days from the day on which notice of such disapproval is received by the Member, to withdraw from the Organization effective upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization.

5. At the earliest possible date after any provision of this Charter becomes effective, Members shall terminate, either by agreement or in accordance with their terms, any international obligations they may have with non-Members which would prevent them from giving full effect to such provision.

6. Nothing in this Article shall be interpreted as requiring the withdrawal of any Member from membership in other inter-governmental organizations of the type described in Article 57 of the Charter of the United Nations or as over-riding any of the economic provisions in the treaties of peace between the Allied and Associated Powers and the states which were their enemies during the Second World War.] ⁽²⁾

(2) The Sub-Committee suggests that the necessity of including this paragraph be examined by the Legal Drafting Committee.