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

Annotated Agenda

Prepared by the Secretariat for
discussion of Articles 14, 15, 15A and 24

This Agenda supersedes the relevant parts of documents E/PC/T/W.28 and W.64, and should be read in conjunction with the Report of the Drafting Committee (E/PC/T/34) hereafter referred to as "D. C. Report". It incorporates proposals reported to the Secretariat by Delegations to May 30, 1947, inclusive.

Article 14 - General Most-Favoured-Nation Treatment

General Note

1. The delegates who maintained their suggestion with regard to the adaptation of preferences within a preferential system, mentioned under General Comments in the D.C. Report (page 10), were those for Australia and India, with the concurrence of the delegate for the Union of South Africa.
2. The Cuban Delegation reserves its right to present amendments at the moment Commission A begins the discussion of this Article, or before that date (cf. E/PC/T/W.149).

Paragraph 1

1. Following the announcement made by the French Delegate during the discussion of Paragraph 6 of Article 16 in the Working Party for Technical Articles (cf. E/PC/T/WP1/ACL/SR/1 and E/PC/T/WP1/SR/10), the French Delegation has presented the following observations with regard to the question of direct consignments (cf. E/PC/T/W.141):

"It follows from the present wording of Article 14 that customs advantages, in connection with importation, apply to all products originating in Member countries. On a strict interpretation, this article would preclude export countries being taken into consideration. In other words, customs advantages would be granted to products harvested or manufactured in Member states, even if they be sold and exported by other countries, whether Members of the organization or not, and the conditions of direct consignment could not be imposed by importing states.

This provision which should be read in conjunction with Article 16, paragraph 6, to which the French Delegation has already drawn attention is incompatible with France's traditional legislation under which customs advantages depend both on country of origin and country of export.

The French Delegation feels obliged to point out that, in the opinion of its Government it is not desirable, at a time when French ports, which were severely damaged by the war, are in process of reconstruction and require every help from public authorities, to make any change in existing legislation which, hitherto, has not given rise to any difficulty in any of the bi-lateral or multi-lateral agreements concluded by France. France is not in a position to adapt her legislation immediately to the terms of Articles 14 and 16. In any event she would need some time to make the necessary changes."

2. The United States Delegation proposes the following amendment to this paragraph (cf. E/PC/T/W.146):

"1. With respect to customs duties and charges of any kind imposed on 1 or in connection with 1 importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all matters in regard to which national treatment is provided for in Article 15 referred to in paragraphs 1, 2, 3 and 4 of Article 15, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating or destined for all other Member countries respectively."

The Delegation comments as follows :

"The changes proposed in line 8 of paragraph 1 are designed to extend the grant of most-favoured-nation treatment to all matters dealt with in Article 15 (except governmental operations under paragraph 5 of Article 15) regardless of whether national treatment is provided for in respect of such matters."

3. The Australian Delegation proposes the following amendment to this paragraph, (E/PC/T/W.147):

"Insert after the word "shall" the words "except as otherwise provided elsewhere in this Charter"."

The Delegation comments upon this amendment as follows :

"It was clearly not the intention that the "most-favoured-nation" treatment required by Article 14, and the "national" treatment required by Article 15, should over-ride specific exceptions provided in other Articles of the Charter. For example, Article 28 provides for the possibility of discrimination in certain circumstances, and some provisions of Articles 30 and 31 might be regarded as inconsistent with full "national" treatment. The words which it is suggested should be added to Articles 14 and 15 are designed merely to remove any possible doubt on this question."

Paragraph 2.

1. The two reservations mentioned in Specific Comments in the D.C. Report (page 10) were made by the delegates for China and Chile respectively.

2. The reservation made by the Delegate for Chile was superseded by his proposal to add a new paragraph 3 (cf. E/PC/T/W.27) in which the Delegates for Lebanon and Syria concurred.

The Preparatory Committee discussed this proposal in three executive sessions, held on 21 and 22 May (cf. E/PC/T/EC/PV.2/6-8) and decided that it should not be considered in conjunction with Article 14.

The Delegates for Chile, Lebanon and Syria reserved their position on Article 14.

3. Sub-paragraph (a) refers to preferences in force (i) between territories which on 1 July 1939 were connected by common sovereignty or relations of protection or suzerainty, and (ii) between territories listed in Annexure A to the Charter. The following lists have been received:

a list of territories covering the British Commonwealth (D.C. Report page 53),

a list of territories in the French Union (E/PC/T/W.49).

The former of these lists was supplied as applying to item (ii), and the latter to item (i), of sub-paragraph (a).

4. The United States Delegation proposes the following amendment to this paragraph (cf. E/PC/T/W.146):

"2. The provisions of paragraph 1 of this Article shall not be construed to require the elimination, except as provided in Article 24, of any preferences in respect of customs import duties or other charges or internal taxes imposed on importation, which do not exceed the preferences remaining in force after the negotiations contemplated provided for in Article 24 and which fall within the following descriptions:

- (a)
- (b)
- (c) "

The Delegation comments as follows :

"Certain drafting suggestions are made in paragraph 2 with a view to making Articles 14 and 24 fully consistent. The insertion of the reference to internal taxes would place preferential internal taxes on the same footing as preferential tariffs, both of which would be subject to negotiations under Article 24. (see amendment to Article 24)."

Article 15 - National Treatment on Internal Taxation and Regulation.

General Notes

The two reservations mentioned in the D.C. Report (page 10) under "General Comments" were made by the Delegate for Brazil and Cuba respectively.

Paragraph 1.

1. The Delegations of the United States (cf. E/PC/T/W.23), Cuba (cf. E/PC/T/W.29, page 2) and Norway (cf. E/PC/T/W.99) propose the deletion of this paragraph.

2. The Chinese Delegation proposes addition of the words "relating thereto" after the words "nor internal laws, regulations or requirements." (cf. E/PC/T/W/79).

Paragraph 2.

1. The reservations mentioned in the D.C. Report (page 10) were made by the Delegates for India and Norway respectively.

2. The United States Delegation proposes the following amendments to this paragraph (cf. E/PC/T/W/23) :

"[2] 1. The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin. Moreover, in cases in which there is no substantial domestic production of like products of national origin, no Member shall impose new or higher internal taxes on the products of other Member countries for the purpose of affording protection to the production of competitive products."

3. The Chilean Delegation proposes addition of the following sub-paragraph after paragraph 2 (cf. E/PC/T/W.56) :

"The provisions of this paragraph shall not imply exemption from internal taxes imposed on imported products to bring them into line with the taxes imposed on national products".

Paragraph 3.

1. The four reservations as to the requirements concerning mixing, processing etc., mentioned in the D.C. Report (cf. page 11, under a) were made by the delegates for Brazil, the Netherlands, New Zealand and the Union of South Africa.

2. The country suggesting the addition of a second proviso and reserving its position on the last sentence of this paragraph (same page, under b) was New Zealand.

3. The United States Delegation proposes the following amendments to this paragraph (cf. E/PC/T/W/23, page 2) :

"3 2. The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, exhibition or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an any imported product permitted to be mixed, processed, exhibited, or used, Provided that any such requirement in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, or, in the case of laws, regulations or requirements relating to cinematograph films, until the expiration of three years from the day on which this Charter enters into force. Which period may be extended Such requirements may be continued for additional periods in respect of any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter. after consultation with the other Members whose trade is substantially affected by the requirement, determines that in the special circumstances alternative measures permissible under this Charter would not be practicable. Requirements permitted to be maintained under the foregoing proviso this paragraph shall be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24.

4. The Delegation of Cuba proposes to delete the second part of this paragraph, beginning with the words : "The provisions of this paragraph under Article 24" (cf. E/PC/T/W.29, page 2).

5. The Delegations of Benelux and Czechoslovakia (cf. E/PC/T/W.92), supported by that of New Zealand (cf. E/PC/T/W.106), propose the following redraft of paragraph 3 :

"3. (a) The products of any Member country imported into any other Member's country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, transportation, distribution or use of any kind whatsoever.

(b) The provisions of sub-paragraph 3 (a) of this article shall be understood to preclude the application of internal requirements, other than those applied to like products of national origin, restricting the amount or proportion of an imported product permitted to be mixed, processed, or used, unless the effect of the application of any such requirements is not more restrictive or burdensome than that of other measures, such as customs duties or subsidies, permissible under this Charter. Requirements permitted to be maintained under this sub-paragraph shall be subject to negotiation in the manner provided for in respect of tariff under Article 24".

(Note. This amendment supersedes former amendments proposed by the Delegations of Czechoslovakia (cf. E/PC/T/W.26) and of Benelux (cf. E/PC/T/W.48)).

6. The Indian Delegation proposes the substitution of the following new paragraph for the passage beginning with "The provisions of this paragraph" and ending with "under Article 24" (cf. E/PC/T/W/25) :

"4 (a). Notwithstanding the provisions of paragraph 3 any Member shall be free to institute or maintain internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used; Provided that no such requirements shall be applied to any imported product in respect of which the importing Member has assumed an obligation through negotiations with any other Member or Members pursuant to any of the provisions of this Chapter; Provided further that in the case of any such requirement in force on the day of the signature of this Charter, Members shall give effect to the preceding proviso at the earliest practicable date but in any event not later than one year from the day on which this Charter comes into force.

(b). Requirements permitted to be maintained under sub-paragraph (a) shall be subject to negotiation in the manner provided for in respect of tariffs and preferences under Article 24."

7. The South African Delegation proposes the deletion of the word "transportation" in the seventh line of this paragraph (cf. E/PC/T/W. 62).

8. The Norwegian Delegation proposes the deletion of the second and third sentence of this paragraph (cf. E/PC/T/W.99).

9. The Chinese Delegation proposes the deletion of this paragraph (cf. E/PC/T/W.79).

10. The Australian Delegation proposes an amendment to this paragraph as follows (cf. E/PC/T/W. 147) :

Insert after the word "shall" the words
", except as otherwise provided elsewhere in this Charter,".

Comment. (see under Article 14, paragraph 1).

11. It seems likely that certain countries which are not members of the Preparatory Committee but prospective members of the I.T.O. will attribute considerable importance to their mixing regulations, particularly when used for the purpose of agricultural production.

Paragraph 4.

1. The reservations and statements referred to in the D.C. Report (page 11) were made by delegates for the following countries:

reservation as to the second sentence:
Czechoslovakia;

statement concerning film hire tax:
New Zealand;

reservation as to the whole paragraph:
United States.

2. The United States Delegation now proposes deletion of paragraph 4 (cf. E/PC/T/W/23, page 3 and proposed change in paragraph 3).

3. The Czechoslovak Delegation proposes deletion of the second sentence (cf. E/PC/T/W.26).

4. The New Zealand Delegation proposes the following amended text of this paragraph (cf. E/PC/T/W.106):

"The provisions of this Article shall not be construed to prevent the application of internal laws, regulations, requirements, or taxes relating to the distribution or exhibition of cinematograph films. Any laws, regulations, requirements or taxes so applied shall, however, be subject to negotiations for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24."

5. The Norwegian Delegation proposes the following new text numbered paragraph 3 and replacing the present paragraph 4 (cf. E/PC/T/W.99, p.1 under 3, and comment on page 3):

"3. The provisions of paragraphs 1 and 2 of this Article shall not preclude the regulation of imports permissible under this Charter being made through internal taxes or other arrangements applicable to imported goods only, provided that such taxes or arrangements are no more restrictive of international trade than other measures permissible under the Charter."

6. The Benelux and French Delegations propose an amendment, affecting only the French text of the second sentence (cf. E/PC/T/W.30).

Paragraph 5.

1. The following new version of this paragraph is proposed by the United States Delegation (cf. E/PC/T/W/23, page 3):

"5 3. The provisions of this Article shall not apply to the procurement by governmental agencies of supplies products purchased for governmental use purposes and not for commercial purposes such as resale nor for or use in the production of goods for sale."

2. The following version is proposed by the Indian Delegation (E/PC/T/W/25):

"5. The provisions of restrictions imposed by this Article shall not apply to the procurement by governmental agencies of supplies products purchased for governmental use purposes and not for resale nor or for use in the production of goods for sale."

3. The Chinese Delegation proposes deletion of the words in square brackets in the New York draft (cf. E/PC/T/W.79).

4. The Norwegian Delegation proposes the following new text, numbered paragraph 5, and replacing the present paragraph 5 (cf. E/PC/T/W.99, pp.1, 3 and 4):

"5. The provisions of this Article do not apply to the procurement by governmental agencies of supplies for governmental use and not for resale nor for use in the production of goods for sale. Nor shall they apply to cinematograph films."

Proposed New Paragraph.

The Norwegian Delegation proposes the following new paragraph, to be numbered paragraph 4 in the Norwegian reformulation and re-arrangement of Article 15 (cf. E/PC/T/W.99):

"4. So long as different prices for like products exist on the world market, the provisions of paragraphs 1 and 2 shall not preclude the establishment on a national market of equal prices for like products, whether of foreign or domestic origin."

Suggested Addition to the Draft General Agreement on Tariffs and Trade, possibly affecting Article 15.

The Australian Delegation proposes the following addition to Article II of the "Draft General Agreement on Tariffs and Trade" (D.C. Report, Part III, p.66), which may involve a corresponding addition to Article 15 (cf. E/PC/T/W.112 which also sets out the reasons for the suggested addition):

"The provisions of paragraph 1 of Article VIII of the General Agreement on Tariffs and Trade shall not prevent a Member from imposing at any time on the importation of any article a charge equivalent to an internal tax imposed in respect of a like domestic article or in respect of a commodity from which the imported article has been manufactured or produced in whole or in part."

New Article 15A.

1. The United States Delegation suggests insertion of the following new article (cf. E/PC/T/W.23, page 3):

"Article 15A

The products of any Member country exported to any other Member country shall not be subject to any measure imposed by either the exporting or the importing country requiring such exports to be financed, shipped or insured by enterprises of any prescribed nationality."

2. The Brazilian Delegation, seconding the United States proposal for insertion of Article 15A, proposes addition of the following paragraph to the text of that Article (cf. E/PC/T/W.105):

"Member countries shall take the necessary steps to prevent transport or insurance undertakings from establishing discriminatory rates in favour of countries of origin or of destination."

Article 24. Reduction of Tariffs and Elimination of Preferences.

General Note

The Cuban Delegation reserve its right to present amendments at the moment Commission A begins the discussion of this Article or before that date (cf. E/PC/T/W.149).

Paragraph 1.

1. The United Kingdom Delegation proposes that the first sentence of this paragraph should read as follows (cf. E/PC/T/W.135):

"Each Member, other than a Member subject to the provisions of Article 33, shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Member or Members for a reciprocal and mutually advantageous agreement"

2. The United States Delegation proposes the following Amendments to this paragraph (cf. E/PC/T/W.146):

"1. Each Member, other than a Member subject to the provisions of Article 33, shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Member or Members directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of the import tariff preferences referred to in paragraph 2 of Article 14 on a reciprocal and mutually advantageous basis. These negotiations shall proceed in accordance with the following rules:

(a) Prior international commitments obligations shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action agreements resulting from such negotiations shall not require the modification or termination of existing international obligations except by agreement between (i) with the consent of the contracting parties to such obligations, or, falling that, in the absence of such consent, (ii) by termination of such obligations in accordance with their terms.

(b) All negotiated reductions in most-favoured-nation import tariffs rates shall operate automatically to reduce or eliminate margins of preference, and no margin of preference shall be increased.

(c) The binding or consolidation of low tariffs or of tariff-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences."

The United States Delegation comments as follows:

"The proposed amendments to the opening sentence of paragraph 1 are designed

(a) to make it clear that the reciprocal and mutually advantageous character of the arrangements envisaged applies to the arrangements themselves rather than to the negotiations leading up to their conclusion, and

(b) to assure that all preferences excepted from the most-favoured-nation clause by virtue of paragraph 2 of Article 14 will be subject to negotiations under Article 24.

1 (a) The changes proposed in paragraph 1 (a) are designed to clarify the provision and render it more precise.

1 (c) It is proposed to omit from paragraph 1 (c) the reference to the consolidation of duties in order to avoid the possible interpretation that a binding and a consolidation are different things."

Sub-paragraph (b)

1. The four delegates who maintained their views that paragraph 1 should not operate automatically (D.C. Report, page 18) represented Australia, India, New Zealand and the Union of South Africa.

2. The Australian Delegation proposes to replace the existing sub-paragraph by the following (cf. E/PC/T/W.147):

"(b) In the negotiations relating to any specific product -

- (i) Where the negotiations affect only the m.f.n. rate, any negotiated reduction in that rate shall operate automatically to reduce or eliminate any margin of preference applicable to the product;
- (ii) Where the negotiations affect only the preferential rate, the m.f.n. rate shall automatically be reduced to the extent of any reduction in the preferential rate;
- (iii) Where the negotiations affect both the m.f.n. rate and the preferential rate, such reductions may be effected in either as may be agreed between the Members concerned;
- (iv) No margin of preference shall be increased and no new preference created except in accordance with other sections of the Charter or with the agreement of the parties having a substantial interest in the concession."

Paragraph 3.

1. The two delegates who suggested the insertion of the words "and particularly with regard to Members' legitimate need for protection" (D.C. Report page 18-19) represented Brazil and Chile.
2. The delegate who wished to consider the definition of the expression "without sufficient justification" (D.C. Report, page 19) represented Chile.
3. The Delegation of China proposes that the second sentence should read as follows (cf. E/PC/T/W.76):

"If the Organization, having regard to the provisions of the Charter as a whole, particularly to the legitimate need for protection on the part of the Member complained of, finds that such Member has, without sufficient justification, failed to negotiate.....of this Article."

4. The United Kingdom Delegation proposes that the second sentence of this paragraph should read as follows (E/PC/T/W.135):

"The Organisation, if it finds that a Member has, without sufficient justification, having regard to the provisions of the Charter as a whole, failed to /negotiate with such complaining Member in accordance with the requirements of paragraph 1 of this Article/ enter into negotiations with such complaining Member in accordance with the requirements of paragraph 1 of this Article or to complete such negotiations,....."

5. The United States Delegation proposes the following amendments to this paragraph (E/PC/T/W.146):

"3. If any Member considers any other Member has failed /, within a reasonable period of time, / to fulfil its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization /, / which /shall make an/ after investigation, shall make appropriate recommendations to the Members concerned. /The Organization, if it/ If the Organization, taking into account the economic position of a Member under the Charter as a whole, finds that /a/ such Member has /, without sufficient justification, having regard to the provisions of the Charter as a whole/ failed without sufficient justification to negotiate with such complaining Member, within a reasonable period of time, in accordance with the requirements of paragraph 1 of this Article, the Organization may determine that the complaining Member, or in exceptional cases the Members /of the Organization/ generally, shall, notwithstanding the provisions of article 14, be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member, or the Members /of the Organization/ generally as the case may be, may have negotiated pursuant to paragraph 1 of this Article. If such benefits are in fact withheld, so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. The provisions of this paragraph shall operate in accordance with the provisions of Article 67."

The United States Delegation comments as follows:

"The changes proposed in paragraph 3 are largely of a drafting nature. The phrase "within a reasonable period of time" has been moved so as to make it clear that the Organization, rather than a complaining Member, would judge whether another Member was complying with its obligations within a reasonable time.

Note: The United States Delegation may wish at a later stage to make certain suggestions for a general regrouping of articles under Chapter V. Meanwhile, it is proposed that Articles 14, 15 and 24 should in any event be grouped together under a single section."

6. It may be questioned whether or not the last sentence of this paragraph is superfluous.

Suggested new paragraphs

1. The D.C. Report (page 19) quotes a new paragraph suggested by the delegate for the United Kingdom.

2. The French Delegation proposes the addition of a new paragraph to read as follows (E/PC/T/W.142):

"4. The Organization shall, as soon as possible, fix the maximum rate of protection, which must not be exceeded by any Member. This rate may be subject to periodic revision in order to achieve a progressive reduction in customs tariffs. Exceptions with regard to certain products may be agreed to by the Organization."