

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

SUB-COMMITTEE ON ARTICLES 14, 15, 24, 34, 35 AND 38.

NOTE BY THE SECRETARIATON ARTICLES 34, 35 AND 38.

The following note indicates briefly the points that have been referred to the Sub-Committee for discussion, namely:

1. the comments contained in the Report of the Drafting Committee (Pages 29 to 32)
2. the amendments proposed by delegates during the present Session (contained in the Annotated Agenda, W.175 and in W.184), and
3. the views expressed and amendments proposed by delegates during the general discussion in Commission A on 11, 12, and 13 June 1947.

Article 34

Emergency Action on Imports of Particular Products.

(Except where otherwise specified the page numbers relate to A/PV/11).

Paragraph 1

(a) The Belgian delegation propose (W.167 and pages 3 and 13 - 14) that the words in brackets, lines 8 - 14, be deleted. In W.167 this proposal is supported by the following statement:

"Article 34 provides an escape clause the importance of which should not be under-estimated. The words enclosed in brackets greatly enlarge its scope to the sole advantage of producers in a territory receiving the benefits of a preferential system."

The deletion of these words was supported by :

the delegate for the Netherlands (pages 12 and 17) :  
if preferences are mentioned, why should not the paragraph refer also to quantitative restrictions and state trading?

but the proposal was opposed by :

- (i) the delegate for the United Kingdom (pages 3, 13 and 16) : this escape clause must maintain the balance between the concessions on tariffs and those in respect of preferences; and in any case this phrase is required because the reference to "domestic producers" is not applicable in the case of injury suffered by those in other countries to which preferences are accorded;
- (ii) the delegate for Australia (pages 4 - 6 and 18): it is essential that the escape clause should refer to both preferences and tariffs, but the Australian delegation seeks no privileges for industries protected by preferences which are not enjoyed by those protected by other means;
- (iii) the delegate for the Union of South Africa (pages 7-9) : the escape clause must not be used to reduce what the members of a preferential system may gain in exchange for giving up their preferences;
- (iv) the delegate for Cuba (pages 11 and 15) : the words in brackets give expression to a principle which was accepted at the First Session;
- (v) the delegate for New Zealand (page 13) : if the escape clause is retained it is essential to make provision for preferences.

- (b) The United Kingdom delegation propose (W.163) that the words "at the request of such producers' Government" be inserted after "preference" in line 14. This proposal was not discussed in Commission A.
- (c) The United States delegation propose (W.165) that the last five lines should be altered as follows:

"... the Member shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent such injury, to suspend the obligation in respect of such product in whole or in part or to withdraw or modify the concession to the extent and for such time as may be necessary to prevent such injury/.

This proposal was not discussed in Commission A.

- (d) The Delegate for China (page 19) proposed that the words "in respect of such product" in lines 15 and 16 be placed before instead of after the words "to suspend the obligation". This is a part of the proposal in (c) but if the United States proposal is rejected this will require separate consideration.
- (e) Secretariat Note: Consideration might be given to the desirability of inserting the words "or remove" after "prevent" near the end of the paragraph.

Paragraph 2.

- (a) At the meeting of the Drafting Committee (of. Report, page 29) the delegates for Canada, Chile and Cuba maintained the view that action should not be permitted without prior consultation. In Commission A this view was again put forward by:
- (i) The Delegate for Canada (pages 20-21 and 26-27): serious emergencies can be foreseen and therefore there is opportunity for consultation, and if this procedure is followed the counter-actions will be less drastic.
- (ii) The Delegate for Chile (pages 24 and 39): possibly some procedure could be devised for informing the Organization of action that is likely to be taken.
- (iii) The Delegate for Cuba (page 33): Permission to take action without prior consultation will lead to disagreeable situations.

The proposal of the Canadian, Chilean and Cuban delegates was supported by the delegate for France (page 28).

The following delegates were opposed to the proposed alteration : Australia (page 23), Brazil (page 32), India (page 36), South Africa (page 34) and the United States (page 23)

The Norwegian and Chinese delegates (pages 43-44) said they were prepared to accept the paragraph without change but the delegate for Belgium (page 22), supported by the delegate for the Netherlands (page 30) opposed the proposal and suggested instead that the following wording should be used in the second sentence : "In critical circumstances, such that any delay would cause irreparable damage such action may be taken provisionally without prior consultation ...".

- (b) At the meeting of the Drafting Committee (cf. Report, page 29) the delegate for Canada proposed that, if action without prior consultation is permitted, immediate counteraction should also be permitted.

The Canadian delegate repeated this view in Commission A (pages 21 and 26-27); it was supported by the delegates for South Africa (page 34) and Chile (page 40); but was opposed by the delegate for Australia (pages 23-24) who thought retaliatory action should be postponed until all other possibilities have been exhausted. To this objection the Canadian delegate replied that the possibility of immediate counter-action would act as deterrent.

- (c) Document W.167 contains two proposals of the Belgian delegation, viz:
- (a) To add the following to the first sentence:  
"Such written notice must specify which producers are injured or likely to be injured and the territories in which they are located";
  - (b) At the end of paragraph 2 add:  
"... and provided that notice in writing is given of the producers injured or likely to be injured and the territories in which they are located."

The Belgian delegation give the following explanation:

"The written notice should make clear the reasons for the adoption of such action so that Members have in their possession all the data necessary to form an opinion and determine their policy. Further, if the words enclosed in brackets in paragraph 1 are retained, States affected must know which are the territories on whose behalf emergency action is being taken so that they may be able to take counter-measures equivalent to the additional privileges granted by paragraph 1."

These proposals were not discussed in Commission

4.

- (d) The Delegate for the United Kingdom (pages 29-30) suggested that the Sub-Committee might 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.
- (e) The Delegate for Brazil (page 32) enquired whether the Sub-Committee could consider whether the action proposed by his Delegation in connection with Article 17 could be taken under Article 34.

(Note: The action referred to is stipulated on page 13 of the D.C. Report in note (e) to paragraph 1 and note 2 to paragraph 2 of Article 17, viz: "heavier than counter-balancing duties or quantitative restrictions should be allowed in cases of aggravated or sporsdic dumping" and "quantitative restrictions or other punitive measures should be permissible in order to cope with the import of subsidized products". The Sub-Committee on Article 17 says in its report (cf. E/PC/T.103, page 13)

"It is understood that the obligations set forth in Article 17 could, as in the case of all other obligations under Chapter V, be subject to the provisions of Article 34." This is followed by the following note:

"The Delegate for Brazil wished to make it clear that the reservations made by his country in the D.C. Report concerning Article 17 were withdrawn in view of the interpretation contained in the preceding note.")

- (f) The Delegate for India (page 37) compared Article 34 with Article 13 and said he could see no justification for the different procedures for the introduction of emergency measures. He suggested that the Sub-Committee might examine this situation.
- (g) The Delegate for the United States (pages 41-2) thought the paragraph needs clarification as to whether a Member faced with an emergency situation as a result of action taken by some other Member is entitled to the same privileges in taking emergency action or whether such action would be regarded as counter-action.

Paragraph 3

- (a) There are two proposals for insertion of the word "action" in line 12:

- (i) By the United Kingdom Delegation (W.163):

"or, in the case of a Member at whose request action has been taken by another Member in connection with a preference, the trade of the Member making that request" .....

- (ii) By the Belgian Delegation (W.167):

"and of the States within whose territory the producers injured or likely to be injured are located".

The Belgian Delegation states that this addition will not be necessary if the words in brackets are deleted from paragraph 1.

These proposals were not discussed in Commission A.

- (b) The United States Delegation suggest the deletion of the words "substantially equivalent" in lines 12 and 13 and the deletion of the last sentence (W.165).

The United States Delegation makes the following comment:

"The proposed amendment would leave to the Organization the decision as to what compensatory action would be appropriate in the circumstances without envisaging, as does the present draft, that the privileges of the Article will be abused".

The Delegates for Canada (page 47), Netherlands (page 48) and United Kingdom (page 46) said they would prefer to retain the words "substantially equivalent".

- (c) The Delegate for South Africa (page 10) suggested that the Sub-Committee might consider whether it is clear to which antecedent the word "which" in the third last line refers.

#### Article 35

##### Consultation - Nullification or impairment.

(Except where otherwise specified all page numbers relate to Document A/PV/12).

##### General

The Delegate for Cuba proposed that this Article should be deleted and a new Article inserted in Chapter VIII; as it seems undesirable to limit the possibility of an amicable settlement of misunderstandings or disputes to Chapter V, the procedure should be extended to the whole Charter and a multiplication of procedures should be avoided (pages 3-4, W.172, W.175, pages 3-4).

During the discussion in Commission A (page 12) the Delegate for Cuba said that he would not insist upon the removal of paragraph 1 from Chapter V but would insist that paragraph 2 be placed in its proper form in the Charter.

Paragraph 1.

- (a) The Delegates for Canada (page 17), France (W.168 and page 6), United Kingdom (page 4) and United States (page 11) expressed their opinion that paragraph 1 should be retained in Chapter V.
- (b) The Delegate reserving his position temporarily regarding the words "anti-dumping and countervailing duties" inserted by the Drafting Committee (cf. D.C. Report, page 30), represented Brazil.
- (c) The Delegate supporting the suggestion (made by several other Delegates) to insert the words "without prejudicing the legitimate business interests of particular private or state enterprises" represented Czechoslovakia (cf. D.C. Report, page 30). In Commission A the Delegate for Czechoslovakia said that State enterprises should not be dealt with more severely than the private ones and that when a consultation as to State trading takes place under Article 35 the Member should be entitled to withhold information for the same reason as under Article 42.
- (d) The Delegate supporting the remarks made by the Delegate for Czechoslovakia and declaring that if the words mentioned were not included, he would prefer restoration of the London text, represented France (cf. D.C. Report, page 30).

Paragraph 2

(a) On the proposal of the Delegates for Canada (page 17), Chile (page 27), South Africa (page 21), and United States (page 11) it was agreed (page 32) that the draft for paragraph 2 proposed by the Australian Delegation (W.170 and W.175 pages 5 to 7) be used as a basis for study in the Sub-Committee. The draft was explained by the Delegate for Australia during the discussion in Commission A (pages 7-10).

(b) The following suggestions were made regarding the Australian draft:

- (i) by the Delegate for the United Kingdom (page 19) - to use the phrase "accruing under the Charter" in place of "accorded by the Charter" in sub-paragraph (a). (this was supported by the Delegate for Australia, (page 20) ).
- (ii) by the Delegate for Belgium (page 26). -  
- to reverse the order of items (i) and (ii) in sub-paragraph (a). (this was supported by the Delegate for the United States, (page 30) ).
- (iii) by the Delegate for Norway (page 14) -  
- to reconsider the need for the provision for consultation with the Economic and Social Council and inter-governmental organizations. (the retention of this provision was favoured by the Delegates for Australia (page 15), Canada (page 17), and Netherlands (page 17) ).
- (iv) by the Delegate for France (page 18):-  
- to reconsider the provision for consultation with Members. (the Delegate for Australia said that he did not regard its retention as vital (page 20) ).
- (v) by the Delegate for Brazil (page 30) -  
- to provide for all consultations through the Organization

instead of between Members. (this was opposed by the Delegate for Czechoslovakia (page 32) ).

(c) The Delegates for South Africa (pages 21-2 and 27-9) and the United States (page 30) suggested that possibly the Australian amendment goes much further than was desirable or intended and that the Sub-Committee should consider this. The Delegate for Australia replied to these suggestions (pages 22-5 and 31).

(d) The French Delegate drew attention (page 18) to the reference to Article 35 in the Report of the Sub-Committee on Chapter III (E/PC/T/95, page 6) recording the recognition by that Sub-Committee that "a serious and abrupt decline in external demand might constitute a 'situation ... which has the effect of nullifying or impairing any object of this Charter' within the meaning of paragraph 2 of Article 35." He asked that this be noted for study by the Sub-Committee.

(e) The view of the Delegates for Cuba (W.172 and page 12), and United Kingdom (W.161 and page 19) that paragraph 2 should be removed to Chapter VIII was supported by the Delegates for Canada (page 17) and the Netherlands (page 13). The Delegates for Australia (page 9), Norway (page 14) and United States (page 11) were prepared to consider this proposal but could not commit their Delegations to an opinion without further study.

(f) The proposal of the United Kingdom Delegation to combine paragraph 2 with Article 86 (W:161 and W:175 pages 7-8) was not discussed by the Commission, but the Delegate for the United Kingdom referred to the second paragraph of the proposal as providing the first step in the procedure for consultation (page 5).

(g) The French Delegation proposed (W.168) that paragraph 2 be replaced by a new Article in Chapter VIII (the text of the proposed article to be submitted "in due course"), and that the

title of Article 35 be altered to "Procedure for Consultation", but during the discussion in Commission A (page 6) the French Delegate said that, subject to a few minor changes, his Delegation would be prepared to accept the Australian proposal.

(h) Secretariat note: If this paragraph is retained, it might be appropriate to replace in the first line the words "should consider" by "considers"; also, the expression "any object of this Charter" in line 6 might read "any purpose of this Charter" to conform with Article 1 and paragraph (d) of Article 61.

(i) The New Zealand delegation has proposed the insertion of a provision in Article 13 whereby any Member which considered its interest to be adversely affected by the measures employed by another in connection with governmental assistance to economic development might complain to the Organization and the procedure prescribed in Article 35 would apply. The Sub-Committee on Chapter IV wishes to discuss this proposal at a joint meeting with the Sub-Committee dealing with Article 35.

#### Article 38

#### Territorial application of chapter V - Frontier traffic - Customs unions

(Except where otherwise specified all page numbers relate to Document A/PV/13)

#### Paragraph 1

(a) The representatives of the International Monetary Fund may wish to discuss with the Sub-Committee the relationship between this paragraph and Articles 26, 28 and 29 (cf. D.C. Report, page 32).

(b) The United States Delegation propose that the word "interpreting" in line 7 be replaced by "the territorial application of" in order to remove possible ambiguity (W.165).

Paragraph 2

(a) The amendment in respect of the initial transitional stage of the formation of a Customs Union (cf. D.C.Report, page 32) was proposed by the Delegate for Chile, supported by the Delegate for Lebanon. The Delegation of Chile has now proposed (W.173) that the following text should be inserted after "the formation of a Customs Union":

"and its initial transitional stage, which begins with the entry into force of an agreement establishing the effective commencement of a Customs Union and characterised by a total elimination of customs duties on certain products originating in the contracting countries".

The Delegate for Chile explained to Commission A (pages 23 and 14) that it is his Delegation's desire to supply the means whereby the aim of the Charter to encourage the establishment of customs unions may be achieved.

The Delegate for Norway (page 13) enquired whether this proposal would not provide for a new preferential system of indefinite duration, which would be contrary to the principles of Article 14.

The Delegate for the Netherlands suggested (page 15) that possibly all that the Chilean Delegation desired could be obtained under paragraph 4.

(b) Since the Annotated Agenda was distributed the Lebanon Delegation has proposed (W.184) that the following sub-paragraph be added:

"(c) The creation of a free trade area by the conclusion among Members belonging to the same economic region, of a free trade agreement not involving the adoption of a common tariff or customs administration."

This proposal was not discussed in Commission A.

(c) The United Kingdom Delegation proposes that the proviso beginning in the second line of sub-paragraph (b) should be numbered "(1)" and that the following second proviso should be added (W.163):

"(2) where the countries which enter into the Union are territories which grant preferences as provided for in Article 14(2), the preferences granted by the Union to other territories which previously enjoyed preferences in any of the constituent territories of the Union shall not on the whole be higher than the average level of the preferences previously so granted."

This proposal was not discussed in Commission A.

Paragraph 3.

In Commission A (pages 17-18) the Delegate for Australia explained that the tariffs of Australia's dependencies were revenue tariffs and were applied equally to the goods of Australia and of other countries, but Australia on the other hand accorded free entry to certain merchandise of those territories in order to strengthen their economy; Australia might wish to extend these arrangements to other products in terms of paragraph 4 (cf. D.C. Report, page 32).

Paragraph 4.

(a) The Delegate for the United Kingdom suggested (page 21) that possibly this paragraph should be removed to some other part of the Charter.

(b) At the meeting of the Drafting Committee, the two Delegates who maintained their reservation in respect of regional preferences represented Brazil and Lebanon. The Delegates objecting to the application of paragraph 3 of Article 66 represented Chile and Lebanon. (D.C. Report, page 32.)

(c) The Delegate for Australia mentioned in Commission A (pages 16 and 25) that the question of new preferential arrangements has received attention in meetings of the Sub-Committee on Chapter IV, and he suggested that the two Sub-Committees should make contact so that they will not produce conflicting statements.

(d) The French Delegation made the following observation in W.169:

"The French Delegation had intended to submit an amendment to Article 38, paragraph 4. However, as the Sub-Committee examining Article 13 of the Draft Charter is at present considering proposals which, if accepted, would alter the scope of Article 14 and of Article 38, paragraph 4, the French Delegation prefers to await the results of these discussions before making any definite proposals. In these circumstances, the French Delegation can only reserve the right to submit its observations when Article 38 comes up for discussion."

Paragraph 5.

The Delegate for Australia suggested (page 17) that the Sub-Committee might examine the definition of a customs union with reference to a possible free trade arrangement between two or more customs territories while the territories themselves remain separate.