

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

Held at the Capitol, Havana, Cuba, 13 March 1948 at 3.00 p.m.

Chairman: Mr. BETETA (Mexico)

REDRAFT OF PARAGRAPH 9 OF THE SUB-COMMITTEE'S REPORT ON
ARTICLE 13 PROPOSED BY THE DELEGATIONS OF AUSTRALIA,
SOUTHERN RHODESIA AND THE UNITED KINGDOM.

(DOCUMENT E/CONF.2/C.2/41/Add.2)

The redraft of paragraph 9 was approved without comment.

RESERVATION OF THE REPRESENTATIVE OF IRELAND CONCERNING ARTICLE 14 (4).

(DOCUMENT E/CONF.2/C.2/41).

To meet the view of the Irish representative, the CHAIRMAN suggested
the addition to paragraph 4 of the words "pursuant to Chapter IV".

Paragraph 4 as amended by the Chairman was approved by the Committee.

ARTICLE 15 (E/CONF.2/C.2/42).

Mr. BRUDZINSKI (Poland) expressed the view that the text of Article 15
which would have emerged from the Working Party if the latter could have
held a few more meetings, would have been much more acceptable than that
proposed by the Co-ordinating Committee. His first criticism concerned the
question of the automatic approval of preferences. The Co-ordinating
Committee, in paragraph 5, had introduced a new provision to the effect that
the Organization might have to approve a margin of preference; this would go
far to remove the automatic aspect of the approval, although he admitted that
the two-months provision offered some safeguard.

There was a danger that contemplated preferential arrangements could
be blocked deliberately by third parties in whose favour duties had been
bound by negotiation. The only way of unbinding a bound tariff would be
under the terms of Article 13, paragraph 2, and if no substantial agreement
could be reached, that process could take as long as three years.

The provisions of paragraph 4 (d) could be interpreted to mean that all
countries parties to an agreement would have to have similar plans concerning
/the promotion of

the promotion of economic development and would have to apply them at the same time. If compensation by preferential concession conforming to paragraph 4 (d) were not practicable, the preferential arrangement would have to remain unbalanced. This provision largely nullified the benefits set forth in paragraphs 4, 5 and 6.

Paragraph 5 was incomplete and confused. The text states that the Organization approves the margin of preference in accordance with paragraph 6. Does this mean that the Organization approves the margin as presented by the applicant Member subject only to complaints of an affected Member or to the negotiations under paragraph 6, or that the Organization checks and verifies the need for a certain margin and approves it only if it is satisfied that the margin is reasonable? Once the margin is approved, will it remain bound, and if so for how long? If through experience the margin is proved to be insufficient what will be the procedure to have it revised and eventually increased? Will affected Members have the right to challenge the most-favoured-nation rate even if it was not increased in anticipation of the arrangement or at the time it was entered into? Can the Organization declare that the margin of preference as requested, though necessary, is not reasonable - in other words question the soundness of the proposition and the economic principles underlying the contemplated preferential arrangement? No definite answers to these and other questions were to be found in the present text. As Article 15 formed a part of the overall settlement, however, there seemed to be no possibility of any change in substance. Mr. Brudzinski emphasized his great concern with respect to its provisions, and requested that the following statement be included in the Report to the Conference:

"The Polish delegation presented an amendment E/CONF.2/50 designed to permit temporarily compensatory preferences on products conforming to the development and reconstruction criteria of paragraph 4 (b) and subject to progressive elimination and limits as to duration and margins of preference. The amendment was not accepted. The Polish delegation asked for its view to be recorded that the present text of paragraph 4 (d) of Article 15 concerning preferential concessions nullified to a large extent the advantages of paragraphs 4, 5 and 6 and made the introduction of new preferential arrangements very difficult if not impossible."

Mr. FERRERO (Peru) accepted Article 15 as part of the overall agreement but wanted it to be noted that it far from satisfied the desire of
/under-developed

under-developed countries which wished to use preferences for economic development. He supported the remarks made by the representative of Poland.

The terms of paragraph 4 (d) which set forth that compensation would have to conform with the provisions of paragraph 4 would restrict the practical value of the paragraph to the extent of making the establishment of new preferences almost impossible.

His other main criticism applied to the preamble of paragraph 4 which limited its provisions to Members.

Mr. MULLER (Chile) said that while he was committed to acceptance of the overall settlement, he agreed with the points of view of the Polish and Peruvian representatives. The text of Article 15 satisfied him even less since the decision with respect to Article 93. He could not accept prior approval by the Organization in connection with preferential agreements involving non-Members, and he therefore maintained his delegation's reservation on the whole Article.

Mr. SUTENS (Belgium), Chairman of the Co-ordinating Committee, pointed out that while the criticism which had been levelled at Article 15 might be considered justified, it was impossible to arrive at a perfect text. In regard to the question of non-Members, he pointed out that the Charter had first to deal with the question of Members, that is, those countries which were prepared to undertake serious obligations. The subject of preferential agreements between Members and non-Members should be left to the Organization.

The text of paragraph 5 was admittedly not clear but once again he suggested that the matter should be left to the discretion of the Organization. The Belgian delegation's interpretation of the paragraph was that it implied the binding of most-favoured-nation rates approved by the Organization.

Mr. FERRERO (Peru) and Mr. MULLER (Chile) contended that the statement of the Chairman of the Co-ordinating Committee clearly established that the question of non-Members in respect of Article 15 had not formed part of the general commitment.

Mr. ROYER (France) pointed out that new preferential agreements involving non-Members were covered by paragraph 3.

Mr. COOMBS (Australia) felt that there was a tendency to exaggerate the scale of the problems and the problems themselves raised particularly on paragraph 5.

As an example he drew attention to the statement that preferential agreements which involved the unbinding of a previously bound rate could be jeopardized by a third party, as in such cases only Article 13 would apply.

/Under the terms

Under the terms of Article XXVIII of GATT, however, the various tariffs which had been bound would remain bound for a minimum period of three years, after which there would be a possibility of unbinding them. Any country which was contemplating a preferential agreement would, in negotiation, be able to reserve the rates on products which it intended to cover in the agreement for purposes of development or reconstruction. The only possible difficulty would be during the initial three years - and then only during the latter part of that time.

In connection with another point raised by the Polish delegate, he pointed out that as the purpose of a preferential agreement would be to provide extended markets, the normal practice would be to grant free entry as preferential treatment. The problem envisaged by the Polish delegate could only arise in the exceptional cases where the preferential rate was relatively high.

Mr. LIEU (China) objected strongly to Articles 15 and 16 because they destroyed the value of the most-favoured-nation clause. He wished it to be recorded that he accepted them only as part of the overall compromise.

Mr. DUNAWAY (Liberia) said that he too accepted Article 15 only because he thought opposition at this stage was useless.

Text of Article 15

Paragraphs 1 and 2

These paragraphs were approved without comment.

Paragraph 3

Mr. MacLIAM (Ireland) expressed the view that the words "subject to such conditions as it may impose", placed as they were, qualified the Organization's ability to grant an exception instead of the actual granting of the exception.

Paragraph 3 was approved and it was agreed to ask the Central Drafting Committee to give special consideration to its drafting in the light of the question raised.

Paragraph 4

Mr. SHACKLE (United Kingdom) referring to his delegation's formal reservation on paragraph 4 (a) and on the interpretative note thereon, stated that this reservation would be maintained pending examination of the Charter as a whole by his Government.

Mr. LLORENTE (Philippines) stated that he agreed that certain situations justified the establishment of new preferences. He was not in agreement, however, with the interpretative note referring to paragraph 4 (a). This note needed to be clarified; the concept of "economic region" should be defined more narrowly. The terms "close geographical proximity", "sufficient degree" /and "economic

and "economic integration" also all required further interpretation.

Mr. SAWAF (Syria) stated that the text of Article 93 as agreed by Committee VI made it necessary for him to reiterate the demand his delegation had made in the Sub-Committee that the words "between Members" be deleted from line 4 of the preamble to paragraph 4 of the Article.

Paragraph 4 was then approved.

Paragraph 5 was approved without comment.

Paragraph 6

Concerning paragraph 6 (d), Mr. HAIDER (Iraq) stated that the right to establish preferences between the countries of the former Ottoman Empire was acknowledged by the Treaty of Lausanne, by the League of Nations when Iraq entered that body after the termination of the mandate, and by various subsequent commercial treaties. In order to recognize this right, sub-paragraph (d) had been inserted in paragraph 6 and an appropriate reference included in Article 16. In the opinion of the Iraq delegation the text of paragraph 6 (d) still represented a limitation to the hitherto recognized right of Iraq to enter into preferential agreements with the other countries of the former Ottoman Empire. He referred in particular to the proviso relating to sub-paragraphs (a), (e) and (f) of paragraph 4. He had nevertheless expressed his willingness to accept this proviso if the last sentence of paragraph 6 (d) were deleted. As an alternative he had submitted an amendment to the latter sentence (E/CONF.2/60) which would limit the "substantial injury" provision to Members which, in their most-favoured-nation treaties with the parties to the agreement, had not recognized the right in question to depart from most-favoured-nation treatment. He argued that his amendment involved no change of substance but that it represented a matter of principle to which his delegation attached the highest importance.

Mr. ROYER (France), speaking as Chairman of the Joint Sub-Committee, expressed the view that the Sub-Committee had gone a long way to meet the position of the Iraq delegation. Article 15 dealt with new preferences including any which might in future be concluded between countries of the former Ottoman Empire under their existing rights; however, the "traditional" clause (6 (d)) applied lighter conditions to this particular category of new preferences than to any other. The rights in question to conclude new preferential agreements received formal recognition by their incorporation in the Charter. The interpretative note to paragraph 6 (d) was additional evidence of the Sub-Committee's efforts to satisfy the delegation of Iraq. Moreover, paragraph 6 (d) had been modified to make it clear that the procedure of paragraph 6 (c) was not applicable to agreements in this category. The

/only practical

only practical limitation which still existed was that if a Member's external trade were threatened with substantial injury, the parties to the preferential agreement were to be invited by the Organization to enter into negotiations with such Member and the provisions of sub-paragraph (b) would apply. The case mentioned by the delegate of Iraq was more a matter of principle than of practical importance, as most countries present at the Conference were Members of the League of Nations and therefore recognized the traditional rights of Iraq. He advised the Iraq delegation to seek agreement with those Members of the Conference who had not in the past recognized that traditional right of Iraq.

Mr. JIMENEZ (El Salvador) stated that he wanted it made clear that paragraph 6 (d) applied also to certain Central American countries.

Mr. EVANS (United States) stated that his delegation could accept the amendment proposed by Iraq but only on condition that it was acceptable to all delegations which had shared in the compromise recommendations by the Heads of Delegations.

Mr. HAKIM (Lebanon) strongly supported the amendment. It was a matter of principle to recognize firmly established international rights, and paragraph 6 (d) constituted only conditional recognition. He agreed with the view that no change of substance was involved. The practical effects of the amendment would be negligible; the last sentence of paragraph 6 (d) was not likely ever to be applied as the trade involved was so small.

Mr. REISMAN (Canada) agreed that in practice the countries likely to be affected by the amendment would be those represented at the present Conference which had not recognized the "Ottoman clause"; there was also the case of countries which might come into existence in the future. Such countries should not be deprived of their rights under paragraph 6 (d). He hoped that the delegation of Iraq would not press the amendment.

Mr. MADJID (Afghanistan), Mr. POLITIS (Greece) and Mr. SAWAF (Syria) supported the amendment as a matter of principle.

Mr. KUNTER (Turkey) supported the amendment. Internationally recognized rights were a matter of principle which once established had to be protected. The amendment was not important from the point of view of economics but it represented a problem of legal significance.

Mr. TORRES (Brazil) recalled the consistency with which his delegation had opposed the establishment of preferences. It was recognized that the m-f-n clause was one of the greatest advantages of the Charter and while it had been difficult to accept existing preferences it would be still harder to countenance the establishment of new ones. The rejection of the

/amendment would

amendment would not make for practical difficulties for the representative of Iraq, but its adoption would make for great difficulties with respect to the Brazilian Parliament.

Mr. MULLER (Chile) regretted that Article 93 had not formed part of the general settlement by Heads of Delegations.

Mr. EVANS (United States of America) said that as two speakers had opposed the amendment, he would be unable to vote for it. The overall settlement was binding unless the Committee could accept a change by unanimous agreement.

Mr. HAIDER (Iraq) pointed out that when he had raised this question in the meeting of the Heads of Delegations, it had been stated that it was not a major point of substance. The same view had been expressed in the Sub-Committee and in the Committee. As its adoption would not upset the balance of the overall settlement he could not see any reason for its not being discussed and decided upon in the usual manner.

Mr. ROYER (France) said that his delegation would abstain from voting on the amendment. Rather than accept the latter, he would prefer to see the last sentence of paragraph 6 (d) deleted.

Mr. REISMAN (Canada) repeated his oppositions to the amendment, stating that it both represented a point of substance and involved a major matter of principle.

The CHAIRMAN stated that he would take the sense of the meeting. Thirteen delegates were in favour of the amendment, eighteen opposed it, and fourteen indicated abstention. Paragraph 4 was then accepted, with the correction of a typographical error on the top of page 9 where the word "procedure" should read "Provisions".

Interpretative Notes

The Committee then passed to the discussion of the Interpretative Notes. The note on paragraph 1 was approved without comment.

Concerning the note on paragraph 4 (a) Mr. EVANS (United States) in answer to remarks previously made by the Philippine delegate, stated that he was satisfied with the note and was willing to leave it to the discretion of the Organization to decide what was meant by "economic region".

Mr. SHACKLE (United Kingdom) referred to his earlier statement and added that the Organization would have to decide on facts and on the merits of each individual case. As this note was part of an important and delicate compromise reached in the Co-ordinating Committee he was in favour of maintaining it as it stood.

/Mr. LIEU (China)

Mr. LIEU (China) suggested that the term "economic integration" be changed to "economic affinity".

Mr. LORENTE (Philippines) stated that, as the note read at present, there was no possibility for the Organization to reject any request for the establishment of new preferences. Furthermore, to give the Organization the power to decide on a definition of "economic region", would amount to putting it in a super-state category.

The CHAIRMAN took the sense of the meeting and the great majority was found to favour the maintenance of the note as it stood.

The note on paragraph 6 (d) was approved without comment.

Report of Sub-Committee

The Committee then passed to the discussion of the Report itself. Part I was approved without comment.

In regard to Part II Mr. KUNTER (Turkey) maintained the reservation made previously by his delegation on Article 15, pending instructions from his Government.

Mr. MADJID (Afghanistan) also reserved his delegation's position pending instructions from his Government.

Mr. COOMBS (Australia) suggested a drafting change in paragraph 8, namely that the comma at the end of line 4 of page 3 be deleted and be replaced by the word "as". This change was unanimously accepted.

The CHAIRMAN asked the delegate of Haiti whether he maintained his reservation as stated in paragraph 8.

Mr. MORISSEAU-LEROCY (Haiti) replied in the affirmative, stating that in doing so, he did not consider that he was infringing the "gentleman's agreement" of the Heads of Delegations, but was only leaving open the possibility of finding a solution compatible with his country's vital interests.

Mr. Julian PEREZ (Dominican Republic) supported the delegation of Haiti because his country found itself in the same position.

It was decided to delete the words "pending decisions on Article 16" from the third line from the bottom of paragraph 8.

Mr. HAIDER (Iraq) asked to have the reservation of his delegation on Article 15 recorded.

Mr. MULLER (Chile) reserved the position of his delegation on Article 15 as his delegation could not accept the principle of prior approval as contained in that Article.

Mr. LIEU (China) and Mr. Leon BELLOC (Argentina) reserved their position on the whole of Article 15.

/Paragraph 8 of the

Paragraph 8 of the Report was then approved.

Paragraphs 9, 10, 11 and 12 were approved without comment.

Concerning paragraph 13, Mr. BRUDZINSKI (Poland), Mr. CORIAT (Venezuela) and Mr. Leon BELLOC (Argentina) stated that, in the light of the definitive text of Article 93, they would not maintain the attitude described in paragraph 13 and were willing to see the reference removed. Subject to amendment in this light, paragraph 13 was approved, the last sentence to read as follows: "The delegate of Syria wished it put on record that, in the light of the definitive text of Article 93, he was still opposed to their inclusion".

Paragraph 14 was adopted with the reservation of the United Kingdom maintained in the form presented.

Paragraph 15 was adopted subject to incorporation of the statement made by the Polish delegate (see page 3 of this Summary Record).

Paragraphs 16, 17, 18 and 19 of the Report were adopted without comment. Paragraph 20 was adopted, subject to addition of the number "20" at the beginning, and deletion in lines 6 and 7 of the words "; therefore the..... in Committee".

Articles 8 - 12

The Committee passed to the consideration of the second item on the agenda, namely the proposed redraft of the final text of Chapter III, Articles 8 - 12 as presented by the Central Drafting Committee (E/CONF.2/C.8/10, E/CONF.2/C.8/10/Add.1 and E/CONF.2/C.8/10/Corr.1).

The Report and redraft of Articles 8 - 12 inclusive were adopted without comment.

The meeting rose at 6.00 p.m.
