

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE ON  
TRADE AND EMPLOYMENT

COMMITTEE II

Seventh Meeting  
Held on Friday, 1 November 1946  
at 3 p.m.

Chairman: Dr. COOMBS

1. Postponement of Discussion of Quantitative Restrictions and Exchange  
Control Provisions in Relation to the Protection of Balance of Payments

The CHAIRMAN said that, in accordance with the request of several delegations, he proposed to postpone consideration of the subject until the following week. Several delegations were in process of examining the views already expressed; and possibly modifications would be made which would facilitate the work of the Committee.

2. Emergency Provisions of Draft Charter, Articles 29 and 30

Mr. HAWKINS (United States) said that the purpose of Article 29 of the Draft Charter was to give flexibility to the commitments undertaken in Chapter IV, in order to permit signatory countries to deal with temporary emergency situations. To safeguard the right given, the Article provided for notification and consultation before a country might take the action specified. It also provided that a country might take the action desired even though general agreement was not reached.

Article 30 of the Draft Charter included a general obligation for consultation among member countries regarding any undertaking coming under Chapter IV of the Draft Charter. At the same time it gave member countries a right to complain against action taken by another member country where such action did not comply with the letter or spirit of the agreement, and comprised the right to take compensating measures.

H.E. Mr. AUGENTHALER (Czechoslovakia) was in full agreement with the text of both Articles of the Draft Charter. He suggested that, since Article 30 related also to state trading, Article 26 might be limited to a statement of the principle of non-discrimination as applied to state trading. Details would then be covered by Article 30.

Mr. SHACKLE (United Kingdom) recognized the necessity for including escape provisions, but was apprehensive lest the wide latitude given in Article 29 of the Draft Charter might impair the value of the Charter or undermine confidence in its effectiveness. There would be less necessity for provisions permitting withdrawal or modification of concessions, if those concessions were made subject to revision periodically to meet changing conditions, perhaps at the end of three years.

He suggested that the scope of the Article should be more narrowly drawn. It now covered tariffs, subsidies, quantitative restrictions, state trading, and other aspects of commercial policy; and it was difficult to see how the Article would work out in practice. In the case of tariffs, the operation of the Article might lead to higher rates than those in effect prior to the agreement. What would it mean with respect to quantitative restrictions? How could the previous treatment be defined?

One method of emergency action with respect to tariffs might be to limit the withdrawal of a concession to a specific quantity of imports.

The inclusion of quantitative restrictions in the Article might be construed as recognition of the use of such restrictions for protective purposes.

The United Kingdom delegation wished the scope of the Article to be limited to emergencies in the tariff field and to preferences, since in that field equally serious disturbances to established trade might result from sudden reductions in preferences.

The United Kingdom delegation would suggest a wording to that effect.

He doubted the possibility of giving prior notice of intention to take emergency measures. When such measures were necessary, they often had to be taken immediately; and prior notice would be likely to accelerate the rate of importation and defeat the object of the action. He did not oppose the requirement for notice and consultation, nor the measures related to the unjustifiable use of emergency action.

Article 30 was needed; and he was in agreement with the substance and the drafting of the Article.

Mr. VAN DE KERCHOVE D'HALLEBAST (Belgium) said that Article 29 was contrary to the fundamental principles which underlined the Draft Charter. It left every member free to suspend any obligations undertaken in Chapter IV. This might cause harm to national products relying on competition.

He suggested that it might be left to the International Trade Organization to determine whether any member should take the action provided for in Article 29.

He agreed in principle with Article 30.

Mr. SPEERENBRINK (Netherlands) agreed in general with Articles 29 and 30. He thought it would be difficult to restrict the Articles to tariff reductions, and agreed with the United Kingdom delegate that the requirement for the giving of prior notice was not practicable.

Mr. NEHRU (India) favoured Articles 29 and 30 in principle, but agreed with the United Kingdom delegate that long prior notice was not possible. He wished preferences to be included.

He did not agree with the United Kingdom delegate that the scope of Article 29 should be narrowed to exclude quantitative restrictions.

He had no comment on Article 30.

Mr. MCKINNON (Canada) asked for clarification of the concluding clause of paragraph 1 of Article 29. Did it mean that any rate of duty might be chosen?

Mr. HAWKINS (United States) replied that it did.

Mr. JOHNSEN (New Zealand) supported the views of the United Kingdom delegate that preferences should be considered in Article 29.

Mr. MELANDER (Norway) doubted the wisdom of the exceptions outlined in paragraph 1 of Article 29: they seemed to detract from the Draft Charter. If exceptions were necessary, they should be strictly defined.

Mr. NATHAN (France) had no remarks to make regarding Article 30. The French delegation favoured as much consultation as possible.

With regard to Article 29, he understood that Committee V was considering conditions under which members might ask for modification of their obligations, and suggested the necessity for consultation on the subject between Committees II and V before the discussion could proceed.

The CHAIRMAN suggested that Committee V was concerned only with the procedural aspects of the operation of the escape clause, and he referred to Article 55, paragraph 2, as being relevant in that connection. He would discuss the subject with the Chairman of Committee V and inform the Committee if necessary.

That led to a subject to which he directed the Committee's attention, namely, the fact that Committee I was concerned with employment problems and the maintenance of employment, economic activity and effective demand. It had been proposed in that Committee that if a country were adversely affected because effective demand failed to be maintained, there should be some provision for review of the obligations pursuant to Chapter IV. That was a subject to which the Committee should direct its attention after Committee I had concluded its consideration of the subject.

He also thought clarification should be sought, possibly through consultation with Committee V, of the reference to "in exceptional circumstances" in paragraph 2 of Article 55. Did that refer only to the provisions set forth in Chapter IV, or to circumstances not specifically mentioned in the Draft Charter?

Mr. McCARTHY (Australia) mentioned, for the information of the Sub-Committee, that the Australian delegation desired that preferences and reductions in margins should be negotiated in the same manner as tariffs.

Mr. SPEEKENBRINK (Netherlands) said, with reference to paragraph 4 of Article 50, that it was important to provide for an international body to settle disputes, perhaps the International Court of Justice.

The CHAIRMAN noted the subject for discussion at an appropriate time.

Mr. HAWKINS (United States) commented on a number of points raised in the preceding discussion.

In reply to a suggestion of the United Kingdom delegate that a provision for a review of tariff commitments after a stipulated period (three years) might be substituted for Article 29, he pointed out that the Article provided only for a temporary relaxation of commitments, not for a permanent revision.

He sympathized with the United Kingdom delegation's suggestion that quantitative restrictions should not be included in Article 29, but felt that all Chapter IV obligations should be included in it. Tariff preferences, to which the Australian delegate referred, would be obligations pursuant to Chapter IV and hence covered by Article 29.

Compensating withdrawal of concessions was included in the Article to prevent abuse of its provisions.

The Draft Article stipulated that notice of withdrawal of concessions must be given "as far in advance as may be practicable", but since no time limit was indicated, there was leeway for emergency situations.

A question which needed consideration in connection with Article 55 paragraph 2 was whether it would be possible to have provisions becoming operative before the procedures envisaged in that Article could be set up.

The CHAIRMAN said there was general agreement as to the need for provisions for emergency action. There was some doubt regarding the scope of the provision. Should it be limited to specific parts of Chapter IV or cover the entire Chapter? The majority of countries felt that provisions should apply to all forms of protective action. The question of prior notice might be solved by the United States suggestion that no specific period of notice should be stated. There were no other basic issues.

The subject was referred to the Sub-Committee on Procedures, Tariffs and Preferences.

3. Discussion of Section J of the Draft Charter, Territorial Application

The CHAIRMAN called upon the United States delegate to explain the Section.

Mr. HAWKINS (United States) stated that Section J, which consisted of Article 33, dealt with the important technical matter of territorial application.

Paragraph 1 laid down that the provisions of Chapter IV should apply to all the separate customs territories of any member, for example to the Virgin Islands, which were a customs territory of the United States, and also to the customs territory of the United States itself.

Paragraph 2(a) referred to facilities for frontier traffic, in cases where a frontier ran through a city, etc.; but sub-paragraph (a) did not relate to regional preference arrangements. The area affected by this provision was usually limited to a distance of 15 kilometres from the frontiers.

Paragraph 2(b) laid down that customs unions were desirable, provided that they did not cause any disadvantage to outside countries, in comparison with their trade before the customs unions were effected. This also was a standard clause in all commercial treaties.

Paragraph 3 was self-explanatory.

Paragraph 4 defined a customs territory. Only territories where tariffs were fully assimilated could be considered customs territories under the provisions of this article.

Mr. SPERKENBRINK (Netherlands) pointed out in reference to paragraph 1 that the Netherlands were in a state of evolution in regard to the status of their oversea territories. Accordingly, he was uncertain what effect this paragraph would have on the future relations between the Netherlands and the oversea territories.

In reference to paragraph 2(b) he wished to know whether the new tariff rate on each product had to be below the average of the rates of the constituent territories prior to the formation of the union.

He stated that paragraph 4 was too rigidly defined. It took a long time to conclude arrangements for a customs union. He suggested the use of the word "ultimately" in this paragraph so as to allow an interim period for the preparation of a customs union.

Mr. NATHAN (France) stated that the French delegation represented both France and the French overseas dominions and Indo-China, which had recently been granted dominion status. He seconded the proposal of the Netherlands delegate that an interim period should be provided for in this article to allow for the preparation of customs unions.

Mr. HAWKINS (United States) agreed with the Netherlands delegate that it was not possible to decide what effect this Section would have on the relations between the Netherlands and the Netherlands Overseas Territories, until the new status of the latter was agreed upon.

The phrase "on the whole" in paragraph 2(b) did not mean that an average tariff should be laid down in respect of each individual product, but merely that the whole level of tariffs of a customs union should not be higher than the average overall level of the former constituent territories.

He agreed that it was reasonable to provide for an interim period to allow the establishment of a customs union, but only after it had been definitely agreed to establish such a customs union. There should be no rigid application of the most-favoured-nation clause in such interim periods. However, in regard to the Indian delegate's proposal that an exception should be made to the application of the most-favoured-nation clause in cases where regional preference might lead to a customs union, he doubted whether a customs union would always eventuate in such cases.

The CHAIRMAN stated that there were some problems of principle in connection with this Section; but most of the problems were technical, and arose from the complexity of relationship in a political sense. There was a very great variety of relationships, ranging from Colonial dependence to practical independence except for the recognition of a common sovereign.

It appeared that it was the general feeling of the Committee that the provisions of this Section were reasonable, but that they should be drafted so as to take into consideration their effect on the different political relationships.

Mr. SHACKLE (United Kingdom) thought that the stipulation that the tariffs of the constituent territories should be averaged in the case of customs union would be difficult to apply. He suggested that this average should be weighed in accordance with the respective volumes of trade of the constituent territories.

He was not satisfied with the wording of Paragraph 4; the words "so that all tariffs and their restrictive regulations of commerce as between the territories of members of the union are substantially eliminated" should be drafted so as to allow the establishment of duties, not for protection, but for the raising of revenue.

Mr. McCARTHY (Australia) asked that the provisions in this Article should be so drafted as to allow the system of tariffs between Australia and the islands under her suzerainty to continue in its present form.

Mr. VAN DE KERCHOVE D'HALLEBAST (Belgium) requested that the points raised by the French and Netherlands delegates be dealt with.

Mr. NEHRU (India) pointed out that Article 33 as at present drafted, would apply to certain Indian States, such as Kashmir, because it was "not under the jurisdiction" of the Indian Government.

He suggested a new sub-paragraph (c) to Paragraph 2 to cover regional arrangements: "Advantages accorded by members to adjacent countries, such provision to be consistent with the principles of the ITO."

Mr. BRENNAN (Union of South Africa) felt that the definition included in Paragraph 4 was too rigid. In South Africa's customs union with North Rhodesia, the levels of the respective tariffs were the same, but the structure different, and there was division of the revenues according to the proportion of the volume of trade. South Africa was contemplating again a customs union with Southern Rhodesia, and he also insisted that an interim period should be provided for to allow the establishment of such customs unions. Such period might be either five, ten or fifteen years.

The Committee agreed to refer the Section on territorial application to the Sub-Committee on Procedures, Tariffs and Preferences for drafting.

4. Date of Next Meeting

The Committee agreed

(a) to postpone the date of the next meeting, previously fixed for Saturday, 2 November 1946, until such time in the following week when the Members concerned had informed the Chairman that they were prepared to discuss Item C (Quantitative Restrictions) of the Provisional Agenda, in so far as balance of payments provisions were concerned; and

(b) to fix a meeting of the Sub-Committee on Procedure, Tariffs and Preferences at 10.30 a.m. on Saturday, 2 November 1946, in addition to the meeting fixed for 3 p.m. 1 November 1946. The meeting rose at 4.40 p.m.