

**ECONOMIC
AND
SOCIAL COUNCIL**

**CONSEIL
ECONOMIQUE
ET SOCIAL**

RESTRICTED
LONDON
E/PC/T/C.II/W.5
31 October 1946
ORIGINAL: ENGLISH

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

Second meeting
held on 31 October 1946
at 10.30 a.m.
Chairman: Mr. VIDELA

1. Adoption of Agenda

The CHAIRMAN stated that the Agenda for the Sub-Committee consisted of:

- (a) Further consideration of Article 9. National Treatment of Internal Taxation and Regulation.
- (b) Consideration of Article 10. Freedom of Transit.
- (c) Consideration of Article 11. Anti-dumping and Countervailing Duties.

The Sub-Committee adopted this Agenda.

2. Further Consideration of Article 9. National Treatment of Internal Taxation and Regulation

The CHAIRMAN called upon the Rapporteur to make his report.

Mr. ROUX (France), the Rapporteur of the Technical Sub-Committee, stated that:

- (a) The rapporteurs had met on 30 October 1946, and considered all available material. An earlier meeting was impossible, because the Secretariat had not received material

from delegations or the summary report from the precis writers.

In view of the comprehensive character of the summary report of the Sub-Committee meeting on 28 October 1946 (document E/PC/T/C.II/W.2), the rapporteurs had made no further summary of the Committee's discussions.

(b) The rapporteurs had prepared a new draft of Article 9, which they believed reflected the views expressed at the Sub-Committee meeting of 28 October 1946 and the written views submitted by several delegations, and which seemed to be generally acceptable and consistent with the objectives of the preparatory meeting. (See end of report).

(c) As directed by the Sub-Committee, all reference to government purchasing of supplies was omitted from the draft on the assumption that this would be restored later or covered elsewhere.

(d) The Netherlands Delegate, as well as the Delegates of Australia and Brazil, had proposed that a period of time should be allowed for suppression of discriminatory practices now applied by member governments. No such provision was included in the draft because it was believed that the period before an effective charter came into force should be ample for this purpose.

(e) Brazil had proposed that more simple language be used. It was believed that the committee discussions fully justified the further expansion of Article 9 as submitted by the rapporteurs.

(f) Numerous special exceptions proposed by various delegates in committee discussions or in the presentations of written

views had been carefully considered and excluded from the draft for various reasons, primarily because it was believed that the statement of general principles should not be obscured by exceptions, most of which were of a minor character and many directly inconsistent with the apparently accepted purpose of the Preparatory Committee. Also excluded was the suggestion of several delegates that the ITO be empowered to sanction special exceptions. The French proposal to except state monopolies, for example, was omitted because provisions relating to state monopolies more properly belonged to another section of the Charter.

(g) Particular consideration had been given to the insertion at the end of the suggested new paragraph 2 of the following exceptions:

- (i) the exhibition of imported cinema films may be permitted to such extent as may be necessary to protect national cultural objectives in the importing country.
- (ii) requirements that particular imported products be combined or mixed with particular domestic products may be enforced only to such extent as may be necessary to promote the development of a basic industry in the importing country, and only if an adequate counter-benefit, such as a reduction in, or exemption from, customs duty, be afforded the imported product to which the requirement applies.

It was believed that exception (i), apparently being of interest to only one country, could best be accomplished, if

finally insisted upon, by a reservation, and that (ii) was inconsistent with the objectives being considered by the Sub-Committee and would introduce internal matters into the field of tariff bargaining.

(h) The rapporteurs had drafted the new Article 9 to express more clearly and concisely the contents of paragraph 2 of Article 9 as it appeared in the Draft Charter, and to emphasize the point that the lack of control of a central government over subsidiary governments within its territory was not to be used as an escape from the obligations of such central government.

The draft was as follows:-

ARTICLE 9

NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

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 character whatsoever higher than those imposed directly or indirectly on identical or similar products of national origin.

2. The products of any member country imported into any other member country shall be accorded treatment no less favourable than that accorded identical or similar products of national origin in respect of all internal laws, regulations or requirements affecting their sale, offering for sale, transportation, distribution 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 imported product permitted to

be mixed, processed, exhibited or used.

3. The members agree that neither internal taxes or other charges nor internal laws, regulations or requirements should be used to afford protection directly or indirectly for any national product.

4. Each member agrees that it will take all measures open to it to ensure that the objectives of this Article are not impaired in any way by taxes, charges, laws, regulations or requirements of subsidiary governments within the territory of the member government.

Mr. JOHNSON (United States) pointed out that owing to difficulties in obtaining the exact equivalent in the French translation, the rapporteurs had used the phrase "directly or indirectly" in their new draft of Article 9 in place of the phrase "in connection with", suggested by the United Kingdom Delegate.

The CHAIRMAN thanked Mr. ROUK (France) and Mr. JOHNSON (United States) for their report. He suggested that the Sub-Committee should adjourn for a few minutes to consider the report.

Mr. MEHRU (India) asked that the memorandum of the Indian Delegation (E/PC/T/C.II/W.3) circulated that morning, should be withdrawn as he intended to circulate a revised version.

Mr. VAN DEN BERG (Netherlands) and Mr. ROUK (France) urged postponement of this item until the next meeting, so that the Sub-Committee might have time in which to consider the report of the rapporteurs.

The Sub-Committee agreed to postpone consideration of Article 9 - National Treatment on Internal Taxation and Regulation - until the next meeting, it being understood that it would be placed first on the agenda of that meeting.

3. Article 10 - Freedom of Transit

Mr. VAN DEN BERG (Netherlands) stated that he and also other delegates had submitted written proposals on this subject. Provided the rapporteurs took these documents into consideration, he would not reiterate his proposals at the present meeting.

Mr. CHERRY (South Africa) welcomed this suggestion, but wished to bring out particular points, which were not contained in the document that he himself had submitted.

The Sub-Committee proceeded to discuss paragraph 1 of Article 10.

Mr. NEHRU (India) accepted the general principles of the paragraph. However he thought that the phrase "routes most convenient for international transit" should be more clearly defined, as the present draft appeared to lay down that such transit must go by direct route, even when famine or flood required the use of alternative routes. He suggested the phrase "by routes open to like kind of domestic products" which would maintain the principle of non-discrimination between domestic and foreign products.

Mr. JOHNSON (United States) thought that the language of paragraph 2 clearly did not imply the maintenance of transit against human necessities. The wording "by routes open to like kind of domestic products" would not provide for non-discrimination in regard to products not produced in the country of transit. He suggested that an explanatory note to paragraph 1 on the lines of the Indian Delegate's suggestion might best be appended to the Article.

Mr. RODRIGUES (Brazil) strongly supported the first five paragraphs of Article 10, but reserved his position until paragraph 6 had been discussed.

Mr. SIM (Canada) proposed, in accordance with the French member's original suggestion, that the Sub-Committee should first discuss paragraph 6 and then take the first five paragraphs in order. Paragraph 6 gave a definition of what constituted goods in transit, and it was only logical to discuss that definition first.

Mr. ROUX (France) said that his proposal was merely in regard to form, as the definition came first in the Barcelona Convention.

Mr. VAN DEN BERG (Netherlands), Mr. MORTON (Australia) and Mr. JOHNSEN (New Zealand) seconded the proposal of the Canadian Delegate.

The Sub-Committee proceeded to discuss paragraph 6 of Article 10.

Mr. LOPEZ RODRIGUES (Brazil) asked if the word "vessels" applied to aircraft.

Mr. JOHNSON (United States) replied that the phrase "other means of transport" covered aircraft; however, he suggested that all reference to air transport should be deleted from this paragraph, as a United Nations Organization, PICAO, had already been established to deal with this subject. He further pointed out that paragraph 6, of Article 10 had been taken in entirety from the Barcelona Convention.

Mr. SIM (Canada) agreed that reference to air transport should be excluded from Article 10.

He further suggested the deletion of the word "persons". The Charter dealt with goods, and reference to persons was out of place in that connection.

Mr. VAN DEN BERG (Netherlands), Mr. MORTON (Australia) and Mr. JOHNSEN (New Zealand) also urged the deletion of the word "persons". The transit of persons and also their baggage should

be governed by the immigration laws of the countries concerned. The present wording would mean that countries would have to grant freedom of transit to criminals etc.

Mr. NEHRU (India) asked if there was an international convention dealing with the transit of persons.

Mr. JOHNSON (United States) answered that he knew of no convention dealing with persons and their baggage. He had no strong objection to the deletion of the words "persons and their baggage", but suggested that this phrase be retained, as it merely guaranteed protection of persons and their baggage, which would help countries with a tourist trade, and the exceptions in Article 32 provided for the protection of public morals, health and security from criminals etc.

Mr. LOPEZ RODRIQUES (Brazil) agreed with the United States Delegate. The title of Article 10 explained the reason for including persons; the Article dealt with freedom of transit, not with the movement of population.

Mr. TUNG (China) supported the New Zealand Delegate on the ground that freedom of movement for persons and baggage was provided for in commercial treaties, and both therefore should be specified in the Charter.

Mr. ROUX (France) felt that the question of baggage was the important one; he would agree to exclude the reference to persons from the Article. Baggage was goods passing through a country, whether accompanied or not. He must insist upon the inclusion of the reference to baggage.

Article 1 of the Barcelona Convention mentioned "freedom of transit", and Article 5 provided as follows:-

"No Contracting State shall be bound by this Statute to afford transit for passengers whose admission into its territories is forbidden either on grounds of public health or security, or as a precaution against disease of animals or plants.

"Each Contracting State shall be entitled to take reasonable precautions to ensure that persons are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey."

Mr. DANNEVIG (Norway) asked that copies of the Barcelona Convention should be distributed among members of the Sub-Committee.

Mr. NEHRU (India) supported the request of the Norwegian Delegate. Some countries might want the goods represented by baggage, but take measures to prevent the entrance of persons. The point involved was an important question of principle; and both persons and baggage should be mentioned in the Article. He queried whether "baggage" and "goods" were identical terms, and suggested that the inclusion of baggage, coupled with the exclusion of persons, might raise administrative difficulties.

Mr. MORTON (Australia) supported the United States Delegate. The word "persons" might have been included with the perfectly legitimate object of precluding the continued imposition by some countries of a poll tax on persons in transit. Every country was protected against the entry of undesirable persons. The inclusion or deletion of the word was not of great moment.

Mr. ROUX (France) had no objection to the inclusion of the word "persons", since it was used in the Barcelona Convention. He suggested that the Sub-Committee should ask the rapporteurs to

draw up a comparison between the United States Draft Article and the Barcelona Convention. That was the procedure adopted by the Sub-Committee on Procedures.

Mr. JOHNSON (United States) pointed out that Article 32 (g) provided adequate safeguards to cover legislation relating to immigration, health, public safety, etc.

Mr. DANNEVIG (Norway) and Mr. BAYER (Czechoslovakia) pressed the request that the rapporteurs should be asked to compare the texts of the Draft Article and the Barcelona Convention, for later study by the Sub-Committee.

Mr. RHYDDERCH (United Kingdom) asked whether the adoption of Article 10 would in effect cancel the Barcelona Convention.

The CHAIRMAN suggested that all should keep in mind the fact that the Sub-Committee was only preparing the present subject for inclusion on the agenda for the Conference in 1947.

Mr. VAN DEN BERG (Netherlands) felt that a comparison of the two texts would be useful. They should be identical to avoid different interpretations.

The CHAIRMAN suggested that the question of the relation of the Barcelona Convention, as well as other international conventions, to the proposed Charter of the International Trade Organization was one which should be referred to the Plenary Committee or to the Committee composed of the Chairmen of the five Committees.

The United States in presenting the Draft Charter for consideration probably expected that it would supersede conventions already in force. The suggestion before the Sub-Committee was whether the rapporteurs should be requested to comment on the subject.

Mr. JOHNSON (United States) thought that consideration of the subject was not a proper function either of the rapporteurs or of the Sub-Committee. It was the function rather of the drafters of the Charter next year and of each signatory country. The rapporteurs might compare the two texts. He doubted the wisdom of doing more. It would set a bad precedent.

Mr. TUNG (China) suggested that the freedom of movement of persons should be governed by laws and commercial treaties. If used in the Article the reference to persons might be misconstrued. It should be defined carefully.

Mr. ROUX (France) felt that a comparison of the two texts would be useful. It might be contended that signatories of the Barcelona Convention could not adhere to another convention on the same subject. If the references were identical it was possible that no difficulty would occur.

The CHAIRMAN called attention to the general exceptions provided for in Article 32(d), and pointed out that persons were not included. He suggested that the word "persons" might be removed from paragraph 6 of Article 10, or added to Article 32(d). Were persons excepted in other parts of the Draft Charter?

Mr. JOHNSON (United States), replying to the Chinese Delegate, pointed out that Article 32(e) afforded complete opportunity for the adoption of all measures regarded as necessary for the protection of national interests in time of war or other national emergency.

Mr. TUNG (China) felt that the Article, as at present worded, would permit the right of transit by a foreign military force.

Mr. SIM (Canada) suggested that the references to a military force gave point to his suggestion for dropping the reference to

persons in the Article. As technical experts on customs matters and related subjects, the Sub-Committee would be going far afield if it continued to discuss a term so anomalous in a commercial convention. He suggested that the word be dropped in order to shorten the debate.

The CHAIRMAN, speaking as the Delegate for Chile, referred to the transit arrangement his country had with Bolivia, and reserved his Government's right to consider paragraph 4 of Article 10 in the light of that arrangement.

Mr. JOHNSON (United States) suggested the deletion of the word "persons", since the only purpose of the United States in including it in the Draft Article, and the only interest of the Sub-Committee in retaining it, was to make paragraph 6 conform with the related Article in the Barcelona Convention.

The CHAIRMAN, speaking as the Delegate for Chile, referred to the difficulties which might arise in connection with requirements for special in-transit documents for persons, and seconded the proposal of the United States Delegate.

Mr. NEHRU (India) reserved the right to return to the question of other safeguards for persons.

Mr. BAYER (Czechoslovakia) asked that the rapporteurs should be directed to compare the draft text with the Barcelona Convention, and ascertain to what extent the latter could be included in the draft text.

Mr. ROUK (France) pointed out that both Bolivia and Chile had signed the Barcelona Convention, and referred to the provision therein for the contracting of regional agreements relating to transit. If the draft text was more restrictive, signatory

countries would have to renounce the Barcelona Convention.

Mr. JOHNSEN (New Zealand) understood the Delegate for India as recording his dissent to the omission of the word "persons". He, (Mr. Johnsen) for his part, was in favour of omitting the word. The omission would not change the sense of the Article materially. The Article was intended as a statement of the fact that goods are in transit when they follow a certain procedure.

After several further general remarks, the CHAIRMAN declared the discussion closed.

He asked for a vote by a show of hands on the proposal by the Indian Delegate that consideration of Article 10 should be postponed until the respective Delegations has had time to compare the wording of the Draft Charter with other international conventions.

There were two votes in favour of this proposal.

The CHAIRMAN asked the Sub-Committee to vote by show of hands on the proposal of the United States Delegate that the word "persons" be deleted from paragraph 6.

There were nine votes in favour of this proposal, and three against.

Mr. VAN DEN BERG (Netherlands) asked that the Sub-Committee should vote on whether the rapporteurs should compare the draft text with the Barcelona Convention and other international conventions.

The CHAIRMAN replied that there existed a general agreement to refer the whole question to the rapporteurs for comparison with the Barcelona Convention. In answer to the Delegate for India, he replied that members could raise the question of the inclusion of the word "persons" in the draft text at a later meeting.

4. Date of Next Meeting of the Sub-Committee

Monday 4 November 1946.

The meeting rose at 1.10 p.m.