

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

Third Meeting

Held on Monday 4 November 1946 at 10.30 a.m.

Chairman: Mr. VIDELA

1. Adoption of Agenda

The CHAIRMAN proposed the following Agenda:

(a) Report of Rapporteurs on A-2 of Provisional Agenda -

Article 9.

(b) Report of Rapporteurs on A-3 of Provisional Agenda -

Article 10.

(c) Discussion of A-4 of Provisional Agenda - Article 11.

The agenda was adopted.

2. Future Procedure of Sub-Committee

The CHAIRMAN drew attention to suggestions regarding the Report of the Preparatory Committee made at the Third Meeting of Heads of Delegations (E/PC/T/DEL/3Rev.1).

Part One of the report would consist of a general narrative statement of the Preparatory Committee's discussions, and would set forth the main principles upon which there had been general agreement, and call attention to conflicting views.

Part Two would be for the general guidance of the Drafting Committee. It would specify points upon which general agreement had been reached, and present alternative suggestions in the case of divergent views.

There would be an Appendix in the form of a Draft Charter, including those parts of the United States draft upon which there had been general agreement, any amendments or additions proposed or agreed upon, and any alternative draft clauses. The amendments, additions and alternative draft clauses in question would reflect the suggestions included in Part Two of the Report.

The form of Report envisaged by the Heads of Delegations would necessitate a change of procedure in the work of the Sub-Committee.

In view of the deadline of 15 November 1946 for the completion of Committee II's work, it would be necessary to establish a deadline for the Sub-Committee's work.

It was agreed that the Sub-Committee should, without setting a specific date, endeavour to finish its work not later than 12 November.

Mr. JOHNSON (United States) said that the appointment of two additional Rapporteurs would be desirable, if the Sub-Committee's work was to be completed within the period suggested.

The Nomination of the Delegates of the Netherlands and Canada as additional Rapporteurs was approved.

Mr. van den BERG (Netherlands) accepted the appointment, subject to his being replaced in the near future by the Delegate of Belgium, who would then represent both the Netherlands and Belgium on the Sub-Committee.

It was agreed that the Rapporteurs should decide among themselves as to the order of their work.

To facilitate the work of the Sub-Committee pursuant to the new procedure suggested by the Heads of Delegations, it was agreed that the Rapporteurs' reports, based upon views of all delegations submitted in writing, and upon discussions within the Sub-Committee, together with any dissenting views, should be submitted to Committee II as the report of the Sub-Committee. Written views to be submitted to the Rapporteurs within 24 hours, and all written suggestions submitted to be circulated by the Secretariat to all members of the Sub-Committee.

3. Further Discussion of Article 9

Mr. JOHNSON (United States) reviewed the draft report of the Rapporteurs with regard to Article 9. All reference to government purchasing of supplies was omitted from the redraft of the Article submitted by the Rapporteurs.

It was the understanding of the Rapporteurs that there had been general agreement in the Sub-Committee with the views expressed in the redraft of the Article, subject to the following expression of dissent:

The Delegates of the Netherlands, Belgium, Australia and Brazil proposed that a period of time should be permitted for the discard of discriminatory practices by those member countries which applied them:

The United Kingdom delegate reserved his position regarding the exhibition of imported cinema films.

The Delegate of South Africa reserved his position regarding preferential rates for internal transportation of certain domestic products: as to which reservation he (Mr. JOHNSON) said he might remark that the products in question did not apparently compete with imported products.

The Delegate of New Zealand reserved his position regarding mixing and processing requirements.

The Delegates of Brazil, Australia, and South Africa believed that such restrictions should not be prohibited, where adequate counter-benefits were assured, or where it could be established that they did not interfere with import trade to a greater extent than permitted forms of protection;

The Delegate of India believed that discriminatory internal taxes should not be prohibited if they were for revenue.

The comments of the Delegation of Australia, distributed as E/FC/T/C.II/40, were included in the Rapporteurs' report.

Mr. van den BERG (Netherlands) reserved his position regarding mixing and processing requirements.

Mr. LOPES RODRIGUES (Brazil) reserved his position regarding mixing and processing requirements. His country could not ignore its requirements in that connection. They constituted the only way of encouraging the development of the domestic production on a number of basic products such as alcohol and petroleum.

Mr. JOHNSON (New Zealand) indicated that the Rapporteurs' report on Article 9 did not correctly reflect the position of his Government. He wanted to make clear that the present form of the Article was not acceptable.

The CHAIRMAN pointed out that the report under consideration was a draft report, open to amendment.

Mr. JOHNSON (United States) enquired if the Sub-Committee agreed that the general draft of the report together with the reservations, which he had indicated above, should be submitted to Committee II. He explained that the new draft had only been included in order to elucidate the original text of Article 9. He added that the report would also draw the Committee's attention to the fact that the subject of government purchases had been omitted from the new draft of Article 9.

Mr. NEHRU (India) supported the inclusion of the new draft of Article 9 in the report to Committee II. The new draft was far more clearly and concisely worded than the original.

The CHAIRMAN pointed out that this proposal was not strictly in accordance with the procedure just established. However, if the new draft of Article 9 was included in the report, that would not establish a new precedent in dealing with subsequent articles.

Mr. SIM (Canada) recalled that several delegations at the previous meeting had made a reservation as to further observations they proposed to make, after they had had time to consider the text of the new draft. He himself had two observations to make.

First, he pointed out that, although it had been agreed to exclude any reference to public works in the Article, the phrase "any kind whatsoever" in paragraph 2 of the new draft appeared to cover the subject of public works.

Secondly, he deprecated the phrase "each member agrees that it will take all measures open to it" in paragraph 4. The acceptance of such a commitment would mean that the Canadian Government would be legally bound to exercise in this connection the right of veto, which had been established for dealing with important constitutional matters.

Mr. JOHNSON (United States) thought that the Sub-Committee would agree to the present wording of paragraph 2. It covered supplies for Government use, but only in cases not covered elsewhere in the Draft Charter.

He agreed that paragraph 4 stipulated the use of the Canadian Government's right of veto. He therefore proposed that the Canadian delegate should submit in writing a clause making provision for an exception in that particular case.

Mr. JOHNSEN (New Zealand) understood paragraph 2 of the Rapporteurs' report to imply that the new text of Article 9 reflected the views expressed in the Sub-Committee. In his opinion that was not the case. He did not consider that the views of the Sub-Committee were truly reflected in that statement.

Mr. JOHNSON (United States) explained that only the new text of Article 9 and the reservations made by the various delegates, not the preliminary statements, would be forwarded to the Committee.

Mr. RHEDDERCH (United Kingdom) could not accept the present wording of the reservation in regard to films. He did not want his proposal to be represented as an expression of dissent. He would prefer a note to the Article to say it did not apply to films. There were cultural, as well as commercial, considerations to be taken into account in the case of films. Incidentally, what was described as a United Kingdom reservation was, he understood, supported by France, Czechoslovakia, Portugal and New Zealand.

Mr. MORTON (Australia) associated himself with the reservation. It was because he did so that he had used the word "exhibited" in the first paragraph of his memorandum (E/FC/T/C.II/40).

Mr. van den BERG (Netherlands) said he proposed to submit written suggestions to the Rapporteurs in regard to Article 9. In the meanwhile he had two questions of principle to raise. Was it permissible to replace by direct protection in the form of customs duties an indirect protection which was subject to removal under the provisions of paragraph 2 of the Article? Secondly, he asked for explanation of the phrase "country of origin". He thought that the concept of "country of exportation" should be taken into consideration by the Rapporteurs.

Mr. JOHNSON (United States) replied that elsewhere in the Charter it was laid down that there was no restriction on replacing indirect restrictions by direct restrictions, provided such replacement was in accordance with the provisions of the ITO.

He explained that the two phrases "country of origin" and "country of exportation" were used throughout the Draft Charter with different meanings. In general he accepted the definition of the League of Nations; but that definition could not be applied in every case. Again, there were great difficulties in defining the phrase "country of exportation" by reason of the problems arising in connection with bonded warehousing. It should be one of the first tasks of the ITO to establish definitions in such cases. Inasmuch as protection against discrimination should be applied to all imported goods, whether directly or indirectly imported, he felt that the phrase "country of origin" was the better expression.

Mr. MORTON (Australia) and Mr. RHYDDERCH (United Kingdom) stated that in all matters involving eligibility for preference rates their Governments insisted on direct importation, paying due regard however to present shipping difficulties.

Mr. ROUX (France) said the subject was at once difficult and complex owing to the different laws in force in different countries. The League of Nations had never successfully solved the problem. It was not, in his opinion, a problem on which the Sub-Committee was competent to pronounce. He proposed accordingly to leave the matter of definition to the ITO.

Mr. LOPEZ RODRIGUES (Brazil) referring to the phrase "all measures open to it" in paragraph 4 of the new draft, pointed out that in federal countries like Brazil the constitution of the central government did not allow it to enforce acceptance by the state governments of every commitment undertaken by the central government.

Secondly, he wished to associate himself with the reservation made by the United Kingdom delegation in regard to films, if Article 9 meant that Brazil would not be able to continue the practice of insisting on the inclusion of a short national film in all cinema programmes.

Mr. JOHNSON (United States) replied that the phrase "all measures open to it" meant all measures legally possible and would not require any action inconsistent with a national constitution.

He thought that the Brazilian general reservations in regard to Article 9, already covered the Brazilian delegate's point on the subject of national films; but he would welcome any further detailed reservation.

Mr. TUNG (China) suggested that the example of the Bretton Woods agreement should be followed, and a chapter should be added to the Draft Charter giving definitions of such phrases as "country of origin" and "similar products", and that this suggestion should be brought to the notice of Committee II for recommendation to the Preparatory Committee.

Mr. JOHNSON (United States) thought that the Sub-Committee should limit itself to the Articles placed before it by Committee II; but he suggested that members should submit to the Rapporteurs a list of phrases used in those Articles which they thought needed defining, and that such definitions should be laid down by the Drafting Committee to meet the following January.

Mr. JOHNSEN (New Zealand) thought that no decision should be made in regard to definitions until the Sub-Committee had completed its Agenda.

The Sub-Committee agreed:

- (a) to instruct the Rapporteurs to draw up their report on Article 9 in accordance with the opinions expressed by the respective delegations;
- (b) that all phrases of Articles 9 to 17 needing definition should be referred to the Drafting Committee to meet in January.

4. Future Schedule of Meetings

The next meeting was tentatively fixed for Tuesday 5 November 1946 at 3 p.m. and a further meeting on Wednesday 6 November 1946 at 10.30 p.m.

The meeting rose at 12.55 p.m.