

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

COMMISSION A

Summary Record of the Twelfth Meeting held
on Thursday, 12 June 1947, at 2.45 p.m. in
the Palais des Nations, Geneva.

Chairman: Mr. Max SUTENS (Belgium)

Article 34 - Emergency Action on Imports of
Particular Products.

Approval was given to the proposal of the CHAIRMAN that the existing Sub-Committee on Articles 14, 15 and 24 should undertake also the examination of Article 34 which had been discussed in the previous meeting, and that a new Sub-Committee should be appointed in due course to deal with Articles 35, 36 and 38.

Article 35 - Consultation - Nullification
or Impairment.

The CHAIRMAN drew attention to the annotated Agenda (W.175) recording the proposals of several delegations for an extensive alteration of the text of Article 35 and for the transfer of all or part of this Article to another section of the Charter; he noted in particular that the delegation for Cuba proposed to delete the whole of Article 35 and to insert new articles after Articles 85 and 86; the United Kingdom wished to transfer paragraph 2 of Article 35 to Article 86, while the French delegation proposed that the second paragraph should be replaced by a new article in Chapter VIII.

Dr. Gustavo GUTIERREZ (Cuba) in supporting his delegation's proposal maintained that Chapter VIII was the proper place for the provisions for the treatment of complaints, and that a uniform procedure was desirable. He said that his delegation's proposal appeared to be prompted by the same motive as that of the United Kingdom except that he did not wish to retain in its present position paragraph 1 which provided special treatment for complaints relating to Chapter V.

Mr. R. J. SHACKLE (United Kingdom) said that his delegation was in favour of bringing together and of co-ordinating the procedures relating to the settlement of disputes. He drew particular attention to paragraph 2 of his delegation's proposed Article 86 providing for consultation between the Members concerned as the first step in a new uniform procedure.

Mr. ROYER (France) agreed that the three amendments proposed appeared to have the same aim in view; the French delegation preferred to leave paragraph 1 in Chapter V because there would be a need for consultation on administrative details; paragraph 2, on the other hand, related to a different set of problems. Mr. Royer said that his delegation could agree with most of the Australian draft.

Dr. H. C. COOMBS (Australia) said that the amendment proposed by his delegation was intended to clarify the intentions of this Article; some of the wording of the original Article appeared obscure, for example, was it possible to nullify or impair an "object". In its elaboration of the word "benefits" the Australian draft was intended to cover not only the benefits flowing from the tariff negotiations in terms of Article 24 but also in a wider sense those that would flow from other Chapters

including the employment provisions of Chapter III. Dr. Coombs then amplified the notes in the Annotated Agenda setting forth the main purposes sought by the Australian delegation in its proposed draft. He said that the removal of paragraph 2 of this Article to Chapter VIII seemed acceptable: he suggested that the Australian proposal might be considered with a view to this possible transfer to Chapter VIII but he could not at this stage commit his delegation to support such a transfer.

The CHAIRMAN expressed the opinion that, according to the Report of the First Session, paragraph 2 of Article 35 concerned the whole of the Charter so that the proposal to transfer it to Article 86 was well founded.

Mr. EVANS (United States) said that he would prefer to leave paragraph 1 in its present position; he thought paragraph 2 might be transferred but he could not commit his delegation to support this transfer until the contents of the paragraph were determined. Therefore he suggested that the wording of paragraph 2 be referred to a sub-committee and that a decision be taken later as to the position of the paragraph in the Charter.

Dr. GUTIERREZ (Cuba) said that there seemed to be general agreement among the delegations that paragraphs 1 and 2 required different treatment and therefore his delegation would not insist on the removal of both paragraphs in accordance with its original proposal.

Dr. SPEEKENBRINK (Netherlands) favoured the removal of paragraph 2 to Article 86 and thought that it was desirable to have just one procedure for the handling of complaints.

Mr. COLBAN (Norway) thought that possibly paragraph 2 should be removed from Chapter V but he could not commit his delegation until he had heard the discussion in the sub-committee. Meanwhile

he wished to suggest for consideration by the sub-committee that the procedure provided in paragraph 2 was not sufficiently rapid and that there was no need to propose consultation between the Organization and the Economic and Social Council and other inter-governmental agencies since there was sufficient provision for such consultation in Article 81.

Dr. COOMBS (Australia) said that his delegation attached importance to the retention of the reference to the Economic and Social Council and other agencies because some of the disputes might fall partly outside the scope of the Organization. For example in the event of a deflationary situation it would be desirable to seek to remove the causes and for this purpose consultation with other bodies would be essential; in any event, the words "if necessary" made it clear that there was no obligation upon the Organization to consult other bodies in any case.

Mr. J. J. DEUTSCH (Canada) said that his delegation was of the opinion that paragraph 1 should remain in Chapter V, that paragraph 2 should be consolidated with Article 86 and that the Australian text of paragraph 2 should be taken as a basis for the discussion in the sub-committee; referring to the question of consultation with other bodies, he said that his delegation favoured retention of this provision and thought that it would be particularly useful in connection with the implementation of Chapter III.

Dr. SPEEKENBRINK (Netherlands) thought that it was useful to have a reference to the Economic and Social Council and that the words "if necessary" were sufficient safeguard against delays resulting therefrom.

Mr. ROYER (France) said that it would be necessary for the sub-committee to study the report of the Sub-Committee on

Chapter III, which contained a reference to the relationship between Article 7 and paragraph 2 of Article 35.

Mr. SHACKLE (United Kingdom) stated that the Australian text appeared to embody many improvements and he could give it general support but without prejudice to the question of the transfer of paragraph 2 to Chapter VIII. He mentioned several points of wording which should have the attention of the sub-committee, including the use of the phrase "accruing under the Charter" instead of "accorded by the Charter".

Dr. COOMBS (Australia) replying to suggestions made by various delegations, said that he agreed to the use of the words "accrued under" rather than "accorded by" and that he thought consultation with other Members, as provided in the proposed subparagraph (b), would in many cases be very helpful.

Dr. J.E. HOLLOWAY (South Africa) agreed that the Australian proposal provided a good basis for the discussions of the sub-committee and he stated that it contained at least one new point of substance, namely that the complaining Member must be able to show prejudice before bringing any complaint forward. He suggested that possibly the proposal went further than the Australian delegation had intended and might lead to unforeseen situations.

Dr. COOMBS, in reply to Dr. HOLLOWAY, said that an article such as this was intended to deal with situations which could not be precisely foreseen but the Australian delegation would be prepared to rely on the Organization to interpret the Article in a reasonable manner; although an attempt might be made to redraft the Article in the sub-committee in order to make the limitations on the applicability of its provisions more precise, it would

probably be difficult to do so without detracting from the real value of the Article.

Mr. FORTHOMME (Belgium) suggested that in a case in which the injury to the complaining Member was indirect the Organization should require proof of the facts and of their relationship. Mr. Forthomme also referred to the Sections (i) and (ii) of the proposed sub-paragraph (a) and suggested that the order of these should be reversed.

Mr. Garcia-OLDINI (Chile) referred to the remarks by Dr. Coombs and said that the Article must be carefully framed by the sub-committee so that it would not be necessary to leave too wide latitude to the Organization in the interpretation of its provisions.

Dr. HOLLOWAY (South Africa) said that the main point he had raised previously was in reference to the alternative stated in the proposed sub-paragraph (a), namely "that the promotion of any of the purposes of the Charter is being impeded". He expressed his opinion that in the terms of this Article it would be possible for a Member of the Organization to call in question the tariff policy of another Government on any number of grounds. And even before referring such complaints to the Organization lengthy consultations among the Members would seem to be called for.

Mr. E.L. RODRIGUES (Brazil) suggested that possibly it would be best for all consultations to go through the Organization instead of directly between the Members and he asked that the sub-committee consider this proposal.

Dr. AUGENTHALER (Czechoslovakia), on the other hand, expressed the view that in the first instance discussions should be between the Members concerned.

Mr. EVANS (United States) inquired whether the purpose of paragraph 2 had not been unduly extended by the Australian amendment

and he would like the sub-committee to study this question. He supported the proposal by the Belgian delegate that Sections (i) and (ii) of sub-paragraph (a) of the Australian proposal should be transposed.

The CHAIRMAN said that Article 35 would be referred to a sub-committee which would be given the general directive to study the Article on its merits with the Australian proposal as a basis and taking account of this discussion, and finally to consider its location in the Charter.

Mr. ROYER (France) asked that the reservations by the Czechoslovak and French delegations recorded in the Report of the Drafting Committee should also be referred to the sub-committee.

ARTICLE 36 - CONTRACTUAL RELATIONS WITH
NON-MEMBERS - TREATMENT OF THE TRADE
OF NON-MEMBERS

The CHAIRMAN recalled that the Preparatory Committee at its First Session in London and the Drafting Committee in New York had deferred the preparation of this article; the Committee had now before it only the original United States draft together with the revised draft of the United States delegation (document W.165) and the draft proposed by the delegation of Czechoslovakia.

Mr. EVANS (United States) said that the Czechoslovak proposal appeared to be prompted by the same considerations as had led to the drastic changes introduced in the text now proposed by the United States delegation. The terms of this article, if they were not sufficiently flexible, might have serious consequences for some countries and therefore it was necessary to meet this difficulty without allowing the article

to lose its original value. Mr. Evans then elucidated the intentions of the United States proposal on the lines of his delegation's commentary contained in the Annotated Agenda.

Dr. AUGENTHALER (Czechoslovakia) spoke in support of the text proposed by his delegation (W.171). He said that by adherence to the Charter, Members would have to accept a certain code of manners in international commercial relations and therefore they should not forget their obligations when they have to deal with Non-Members. Each Member will be obliged, in the terms of most favoured-nation provisions, to accord to all Members concessions granted to any Non-Member, but it should be realized that a Member having important trade relations with Non-Members might thereby be seriously prejudiced. Therefore it was necessary to consider whether Members should be compelled to withhold from Non-Members the benefits enjoyed under the Charter. The Czechoslovak delegation fully appreciated the aim that the Charter should be universal but it was doubtful if this could be achieved by introducing economic sanctions which might ultimately be more prejudicial to certain Members than to Non-Members. He said that he foresaw the possibility of serious economic conflicts arising from these provisions.

Dr. COOMBS (Australia) said that it was not possible at this stage to foresee the problems with which Article 36 was concerned, as it was not known which countries would become Members and which would remain outside the Organization. To discuss this Article, it would be necessary to assume that there would be some non-Members, but if any important trading country remained outside the Organization there would be an

acute problem to be faced. There would be the question of the status of existing commercial agreements between countries which are Members and those outside the Organization. He thought provision had to be made for the continuation of these agreements and also for new agreements, although the latter might possibly be made subject to the approval by the Organization. Dr. Coombs expressed the view that if reasonable commercial relations were prevented between Members and Non-Members it could happen that some Members might be forced to withdraw from the Organization (including not only those directly affected but also, as a secondary stage, those indirectly affected) with the result that rival trading blocs might be established. Finally, Dr. Coombs proposed that the sub-committee should carefully consider whether the relations with Non-Members should be determined at the present time or whether it would not be better for the Members to accord most-favoured-nation treatment to all countries throughout an interim period and leave to the Organization the task of examining the problem of relations with Non-Members in the light of the economic relations between those countries that decide to join the Organization and those that do not.

Mr. B.N. ADARKAR (India) said that he was in agreement with the statements of the delegates for Czechoslovakia and Australia and thought it would be wise to leave the settlement of the problem for the International Conference. He thought it also unwise to create discrimination where discrimination did not exist and that the Charter presented to the Conference should not contain any threat of discrimination against countries

which did not see their way clear to joining the Organization. He thought that to frame an article on this subject would prejudice the discussions at the Conference. Mr. Adarkar drew attention to the procedural memorandum on tariff negotiations in the Report of the London Session where it is said that the tariff concessions should be provisionally generalized to the trade of other countries pending consideration at the international conference of the position of countries which do not join the Organization and therefore do not accept the obligations of Article 24.

Mr. COLBAN (Norway) said that he was in agreement with the last three speakers.

The CHAIRMAN said that the meeting would be continued on the following day and the first speakers would be the delegates for New Zealand and the United Kingdom.

The meeting closed at 6 p.m.