

DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at Lake Success on 1 February 1947, at 10:30 a.m.

Chairman: H.E. M. Eric Colban

The CHAIRMAN referred to the amendment to paragraph 3(d) of Article 26, proposed by the Belgian Delegation (C.6/W.34).

Messrs. SMITH (Canada) and LEDDY (United States) agreed to this amendment.

Mr. PHILLIPS (Australia) could not accept the amendment which he considered a substantial change in the London text. Should it be adopted he would have to reserve the position of his Government.

M. JUSSIANT (Belgium) explained that the damage caused by the application of import restrictions might be so widespread as to require a spontaneous action of the Organization.

M. LECUYER (France) considered that the Organization should not be called upon to intervene in matters which should be settled between the Members. If accepted, France would reserve its position on the amendment.

Messrs. WHITE (New Zealand) and MA (China) were of the same opinion as M. Lecuyer.

The Committee decided to approve Article 26 in its present wording with the Belgian amendment as an alternative text.

The CHAIRMAN moved the second reading of Articles 29, 30 and 31.

Article 29 (C.6/24) was approved in second reading.

Article 30 (C.6/24). On page 4, line 13 the word "interest" should read "interests", and in line 16 the words "interest is" should read "interests are".

The Article was approved in second reading, after Mr. SMITH had referred to his previous suggestion to delete the whole of Paragraph 4(b). Article 31. The Chairman introduced the discussion of Paragraph 3 and suggested the following wording:

"The Article shall apply to any enterprise, organ or agency whose trading operations are exercised directly by a Member government or by virtue of special or exclusive privileges granted to the enterprise." Mr. SMITH agreed to this text.

In the discussion of the United States amendment concerning the words "government is in a position to exercise effective control", objections were raised by Messrs. PHILLIPS (Australia) ALVAREZ (Chile) and BAYER (Czechoslovakia). They wished that the London text, which represented a definition agreed upon after long discussions, should be restored. Any amendment should be considered as an alternative draft.

Mr. BAYER pointed out that no government could be sure if it is "in a position" to exercise control. This may be a political question.

Mr. HAKIM (Lebanon) suggested that the language in square brackets in Paragraph 1 be transferred to Article 3 to which M. JUSSIANT and Mr. WHITE agreed.

Mr. BAYER pointed out that his objections were directed to the words "in a position" which could be interpreted in a too wide sense and that he therefore could not agree to the Lebanese suggestion. He was anxious to find a solution to this matter which was of great importance to his government. Perhaps some more concise wording could be found.

Mr. WHITE contended that the words "is in a position to exercise" extend the scope of the definition unduly and that he therefore supported Mr. Bayer's objections.

Mr. LEDDY suggested that the Paragraph should be referred to the Legal Drafting Sub-Committee with the words "is in a position to" in square brackets.

/Mr. FRESQUET (Cuba)

Mr. FRESQUET (Cuba) supported this suggestion.

Mr. SHACKLE (United Kingdom) suggested to simplify the issue by transferring the words in brackets in Paragraph 1 to Paragraph 3. With regard to the substance of the matter he had no instructions from his government.

The CHAIRMAN suggested that the Delegations of United States and Czechoslovakia should meet and attempt to reach a solution which might be suggested to the Legal Drafting Sub-Committee. Pending this, the Committee agreed to pass provisionally the following text, with the words in square brackets representing an alternative version:

3. "This Article shall apply to any enterprise, organ or agency in whose trading operations a government [is in a position to exercise] exercises effective control by virtue of the special or exclusive privileges granted to the enterprise."

Messrs. LEDDY and BAYER declared themselves willing to discuss the matter.

Paragraph 1. In view of the above new wording of Paragraph 3, the words in square brackets in lines 5 and 6 were deleted.

Paragraph 2. Mr. SMITH stated that in his opinion it was decided in the ninth meeting that the words "or use in the production of goods for sale" in line 3 and line 4 should be included (twice) in the tentative draft in square brackets.

Mr. SHACKLE supported this view.

Messrs. ALVAREZ and WHITE reserved the position of their Governments on the Canadian amendment.

On the suggestion of Mr. Smith the following change was approved in Article 34, Paragraph 1 (C.6/28): the words "with respect to a preference" in square brackets should be followed by the following words: "is being imported under such conditions as to cause or threaten serious injury."

/The CHAIRMAN

The CHAIRMAN moved the first reading of

Article 38. Territorial Application of Chapter V - Customs Unions -
Frontier Traffic.

Paragraph 1 approved

Paragraph 2. Mr. ALVAREZ introduced an amendment to this Paragraph (C.6/W.38)⁷
and referred to paragraph 5:b(i) on page 11 of the London Report.

Mr. LEDDY opposed the amendment because it would enable two or more countries to grant each other preferences without definitely committing themselves to the conclusion of a customs union. He pointed out that the language in Part II of the London report would cover the case of the Belgian-Netherlands customs union.

Mr. SMITH agreed with Mr. Leddy.

Mr. ALVAREZ pointed out that Chile is at present consolidating its commercial relations with Argentina and Peru which must be done in stages.

Mr. HAKIM expressed sympathy with the Chilean point of view but felt that there was a danger of abuse. He asked if the Committee could recommend in its report a time limit to the formation of the customs union.

Mr. BAYER wished to support Mr. Leddy's opinion and suggested that the Organization might be empowered to examine the circumstances and decide if it is a case of a genuine union.

M. JUSSIANT explained that only if there is a definite decision of the Governments to form a union can Paragraph 2(b) be applied. It is not admissible that countries extend preferences to each other and decide later if or not a customs union be formed.

Mr. FRESQUET pointed out that initial stages must be conducive to a union if this Paragraph should apply.

M. LECUYER suggested that a language similar to that in page 11 of the London Report could be adopted as an official interpretation of the Paragraph.

/Mr. LEDDY

Mr. LEDDY stressed that a declaration of intention to form a union was not sufficient to ensure the application of Paragraph 2(b).

After further discussion in which the Delegates for Lebanon, Brazil, France, Australia and South Africa took part, the Chilean amendment was not acceptable to the Committee. The CHAIRMAN ruled that Mr. Alvarez might, if he wished to, submit an alternative draft to the Legal Drafting Sub-Committee.

Paragraph 3. Mr. PHILLIPS drew attention to the paper submitted by the Australian Delegation in the London Conference (E/PC/T/C.II/29, 30 October 1946), asking that this Paragraph should be drawn broadly enough to allow continuation of Australia's special arrangements with neighbouring islands. He did not wish to enter a specific reservation on this point, but wished it noted in the records of the meeting that reference had been made to the London document.

Paragraph 4. The CHAIRMAN drew the attention of the Committee to the reservations made in the London Conference by the Delegations for Lebanon and Brazil (London Report, page 11, paragraph 5:(c)). Both Delegations wished to maintain their reservations, pending further instructions from their governments.

Mr. ALVAREZ wished to join the Delegations for Lebanon and Brazil in this reservation. The CHAIRMAN pointed out that new reservations might preferably be brought up at the Second Session of the Preparatory Committee.

Mr. LEDDY explained that Paragraph 2 of Article 66 does not call for a two-thirds majority vote in individual cases. The qualified majority was required when general criteria were set up by the Organization.

Paragraph 5 was adopted.

The Committee discussed

Administrative Matters. The CHAIRMAN explained that the Sub-Committee on Multilateral Trade Agreement Negotiations should hold a short formal meeting next week, on Wednesday.

/Mr. LACARTE (Executive Secretary)

Mr. LACARTE (Executive Secretary) reminded the Committee that, out of eighty-nine Articles of the Charter, thirty-nine were discussed generally, of which some twenty-five were tentatively approved and passed to the Legal Drafting Sub-Committee and the rest was being discussed by the Sub-Committees without being tentatively approved. He expressed the apprehension of the Secretariat that at the present speed the work of the Committee might not be finished before 28 February.