

SECOND AND THIRD COMMITTEES

JOINT SUB-COMMITTEE ON ARTICLES 15, 16 AND 42

REPORT OF WORKING PARTY

1. At its tenth meeting, on 9 February, the Joint Sub-Committee appointed a Working Party, under the Chairmanship of M. Jean Royer (France), to examine the details of the proposals on Articles 15 and 42 and of those relating to tariff preferences on Article 16 with a view to submitting recommendations to the Sub-Committee so as to enable the Sub-Committee to reach agreement on the matters referred to it.
 2. The Working Party was composed of representatives of the following delegations: Belgium, Chile, France, Syria, United Kingdom, United States and Venezuela.
 3. The Working Party benefited from the presence of representatives of other delegations, and in particular wishes to acknowledge the valuable contributions which the representatives of the Lebanon and Poland made to its work.
 4. The Working Party held twenty-nine meetings. It endeavoured to deal with all the issues raised in the amendments proposed by delegations and kept prominently in mind the views put forward by delegates both during the First Reading of Chapter III and IV in Committees II and III and in meetings of the Joint Sub-Committee.
- Article 15 - Preferential Arrangements for Economic Development
5. The terms of reference of the Working Party included the finding of a solution to meet the various amendments submitted to Article 15. Discussion centred on a proposal by the Polish representative which incorporated the main ideas contained in the amendments and expressed in Committee and Sub-Committee.
 6. The main point at issue related to "prior" or "a posteriori" approval. A solution was found in the establishment of criteria and requirements for what would, in effect, be automatic approval.
 7. It was thus decided to establish two procedures:
 - (i) the Geneva procedure of prior approval for preferential agreements not conforming to the specified criteria, and

/(ii) automatic

(11) automatic procedure for preferential agreements which do conform to the criteria.

8. The specified criteria cover such matters as whether the territories of Members are contiguous or whether they belong to an "economic region", essentiality to programmes of economic development or reconstruction, customs treatment of the products the trade in which is intended to be stimulated by the agreement, compensation granted in exchange for preferential treatment, and provisions regarding adherence of other Members, termination and renewal.

9. Other matters discussed related to levels of m-f-n duties, margins of preference, negotiation and compensation in case of serious injury or substantial damage to the external trade of Members, and provision regarding existing agreements, such as those which derive from the Treaty of Lausanne.

10. The Working Party arrived at substantial agreement on the basis of a revised text of Article 15. When the Working Party had reached an advanced stage of its work, the matter was taken up by the Co-ordinating Committee in view of its close connection with other important outstanding issues. The text adopted by the Co-ordinating Committee is contained in document E/CONF.2/45/Rev.1.

Customs Unions and Free-Trade Areas

11. The second major task undertaken by the Working Party was the revision of Article 42 relating to customs unions. The text has been redrafted on the basis of proposals by the French delegation, the main change being to extend to free-trade areas the provisions relating to customs unions, as requested by the delegations of Lebanon and Syria (C.3/11, Item 13). This subject was considered to be of sufficient importance to require its separation from the other matters dealt with in Article 42, and accordingly the Working Party recommends a separate Article devoted exclusively to customs unions and free-trade areas.

12. The new text thus contains three Articles: Article 42, dealing with territorial application; Article 42A, dealing with frontier traffic; and Article 42B, dealing with customs unions and free-trade areas.

13. Territorial Application: The Working Party recommends that paragraph 1 of Article 42 of the Geneva draft, which defines the territorial application of Chapter IV, and the first part of paragraph 4, which contains a definition of "customs territory", should comprise a separate Article and be amended as shown in the Annex to this Report. It is suggested, however, that the Sub-Committee should consider whether the definition of "customs territory" should be moved to some other part of the Charter, perhaps to Article 99, in view of the fact that this term appears also in Articles 68, 97 and 99.

/14. Frontier

14. Frontier Traffic: The proposal of the delegation of Argentina (C.3/11, Item 9) to delete the words "in order to facilitate frontier traffic" from paragraph 2 (a) of Article 42 (Geneva text) was not adopted by the Working Party. It was the opinion of the Working Party that provisions for arrangements to facilitate frontier traffic should be retained and should comprise a separate Article. Accordingly, Article 42A is recommended without change in the words used in the Geneva draft. The text is given in the Annex.

15. Article 42B: The first paragraph of Article 42B is new. It states that the general purpose of a customs union or free-trade area should be to facilitate trade between the participating parties and not to create new obstacles to the trade of these parties with other Members of the Organization.

16. The second paragraph, providing for the establishment of customs unions, is based upon paragraph 2 (b) of the Geneva draft, but there has been added to it a new provision covering the establishment of free-trade areas. An amendment proposed by the United Kingdom (C.3/11, Item 10) has been incorporated, and it is felt that the new text of the Article largely covers an amendment proposed by Chile (C.3/11, Item 11).

17. The third paragraph is based on paragraph 3 of the Geneva draft. It defines the powers of the Organization in respect of interim arrangements for the establishment of customs unions and free-trade areas. The Working Party was unable to accept the proposal of Argentina in regard to sub-paragraph (a) of the Geneva text (C.3/11, Item 14). The substance of a proposal by the delegation of Italy (Item 15) has been included in the revised sub-paragraph (a). In regard to sub-paragraphs (b) and (c) it was felt that the revised text went some way to meet the views of Argentina, Chile and Italy (C.3/11, Items 16, 17, 18, 19, 20 and 21).

18. In paragraph 4 the definition of a customs union, which was contained in the second sentence of paragraph 4 of the Geneva draft, has been amended and a definition of a free-trade area has been added. This describes a free-trade area as a group of two or more customs territories within which tariffs, etc. (except, where necessary, those permitted under Section B of Chapter IV and under Article 43 are eliminated on substantially all the trade between the constituent territories or at least on substantially all the trade in products originating in such territories.

19. A new paragraph (No. 5) has been added to cover the problems which will arise in cases where there were preferential rates of duty in force, either between two of the countries entering the customs union or free-trade area, or between one such country and a country remaining outside.

/20. The proposal

20. The proposal by Iraq (C.3/11, Item 22) to add a new paragraph regarding economic relations between Members of the Arab League was not accepted; it was felt that the revised texts of Articles 15 and 42 covered the point raised by the amendment. These texts are also thought to cover to a large extent a proposal by Argentina (C.3/11, Item 12).

21. The proposed text of Article 42B showing, by means of square brackets and underlinings, the changes from the Geneva draft appears in the Annex to this Report.

Article 16 - General Most-Favoured-Nation Treatment

Consideration of the amendments relating to tariff preferences has led the Working Party to recommend the following changes in Article 16:

22. Paragraph 1: The Working Party did not consider the proposal of the delegation of Chile to add the words "with the exception of the arrangements contemplated in Article 15" at the end of paragraph 1. This proposal is left for the Sub-Committee to consider, and the delegates of Syria and Venezuela indicated their desire to put their views to the Sub-Committee on this matter.

23. Paragraph 2: Preamble - Change the word "levels" to "margins".

Sub-paragraph (b) - Amend the last line to read: "...Annexes B, C, D and [...] E of this Charter....."

Sub-paragraph (e) - (changed from (d) because of insertion of new sub-paragraph by Committee III on recommendation of Sub-Committee A - Amend the last line to read: "...Annexes [E], F and [...] F, G, H and I of this Charter."

24. Annexes Pertaining to Article 16

Annex A

At the meeting of Committee III on 18 February, the delegate for Pakistan drew attention to the inclusion of "India" in the list of territories in Annex A; he suggested that the phrase in parentheses, "as at 10 April 1947", should be deleted and that the name "Pakistan" should be inserted in alphabetical order. This change was approved in principle but was referred to the Joint Sub-Committee to examine in detail and in relation to paragraph 3 of Article 16. The delegation of Pakistan subsequently submitted a proposal with the concurrence of the delegations of India and the United Kingdom, and this is now approved by the Working Party, that there should be no change in the list of countries in Annex A and that the following note should be added to the text of the Annex:

"The Dominions of India and Pakistan have not been mentioned separately in the above list since they had not come into existence as such on the base date of April 10, 1947."

/Annex B

Annex B

At the request of the French delegation, the Working Party recommends that the footnote to Annex B be amended to read: "For imports into Metropolitan France and territories of the French Union." (See E/CONF.2/C.3/6/Add.7). The Delegate for France explained that the exports of the territories to which the note applies enjoy preferential treatment in other overseas territories as well as on importation into Metropolitan France, and this had been overlooked when the Annex was submitted for the Geneva draft.

Annex E

Insert the new Annex for Portugal (C.3/6/Corr.4).

Annex F

(Formerly Annex E). Alter "2 (d)" in the title to "2 (e)".

Annex G

(Formerly Annex F). Alter "2 (d)" in the title to "2 (e)".

Annex H

Insert the new Annex for Colombia (C.3/6, Item 14).

Annex I

Insert the new Annex for the Republics of Central America (in view of the revised texts of Articles 15 and 42 and of the addition of this Annex, the delegation of El Salvador withdrew its original amendment to Article 16, (C.3/6, Item 12)).

25. Proposals by Dominican Republic and Haiti

The Working Party discussed with the delegates of the Dominican Republic and Haiti their proposals on paragraph 2 (c) of Article 16 requesting the extension of the preferences in force between the United States and Cuba to other countries of the Caribbean area (C.3/6, Items 9 and 10). During discussion the delegates for these two countries put forward the following alternative proposal:

"That under Article 16 of the Charter the Dominican Republic and Haiti, or one or other of them, on the one hand, and the United States of America on the other be permitted to grant reciprocal preferences similar in nature and duration to those now in force between the United States and Cuba, dealt with in paragraph 2 (c) of Article 16."

This alternative was proposed "on condition that the delegation of the United States to this Conference gives assurances that the United States will negotiate the appropriate agreements when either of the other two countries so requests."

26. The delegate for the United States stated that there was no possibility of his Government accepting these conditions, and therefore the Working Party
/was unable

was unable to make any recommendations in this connection.

Proposal of Delegation of Peru

27. The proposal of the delegation of Peru (C.3/6, Item 8) to delete sub-paragraph (c) was not discussed by the Working Party.

Other Proposals on Article 16

28. The Working Party took note of the amendments proposed by the delegations of Ecuador, Bolivia, Lebanon and Syria, Turkey, Egypt, Afghanistan, Burma, Argentina and Czechoslovakia (respectively, C.3/6, Items 15, 16, 17, 18, 19, 20, 21, 23 and C.3/6/Add.1), and whilst unable to accept them, felt that their substance was covered, in whole or in part, by the revised text of Article 15. The delegation of Turkey (not a Member of the Working Party) requested that its reservation be recorded, pending discussion in the Sub-Committee.

Free Territory of Trieste

29. The proposal of the delegation of Italy (C.3/6, Item 22), requesting exemption from the most-favoured-nation clause for a special regime between Italy and the Free Territory of Trieste, was subsequently altered to refer only to advantages accorded to trade with Trieste by contiguous countries. The Working Party decided it could accept this modified proposal on condition that trade advantages thus accorded were not contrary to the terms of the Italian Peace Treaty. Accordingly it is recommended that the following be inserted in Article 42 A:

"The provisions of Chapter IV shall not require the generalization to any Member of advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace."

30. If this recommendation is accepted by the Sub-Committee, it may be desirable to re-consider the title of the Article.

31. The delegation of Czechoslovakia (not a Member of the Working Party) requested that its reservation be recorded.

San Marino and Vatican City

32. The Working Party discussed with the delegate for Italy the proposal (C.3/6, Item 22) to exempt the special regime existing between the Republic of Italy and the Republic of San Marino and the State of the Vatican City from the provisions of paragraph 1 of Article 16. The Working Party was of the opinion that the special arrangements existing between Italy and these two territories were not contrary to the Charter and offered to record this opinion in its report to the Sub-Committee. The delegate for Italy withdrew his proposal on the understanding that this opinion would be included in the

/Report to

Report to Committee III.

India and Pakistan

33. The Working Party was informed of the opinion of Sub-Committee I of Committee VI that the Charter should take account of the exceptional circumstances arising out of the establishment of India and Pakistan as independent states and should not prevent these two countries from entering into special arrangements with respect to the trade between them pending the establishment of their mutual trade relations on a definitive basis; Sub-Committee I had come to the conclusion that the Charter should include provisions similar to those incorporated in the General Agreement on ~~Tariffs~~ Tariffs and Trade in paragraph 5 of Article XXIV and in the Interpretative Note to that paragraph.

34. The Working Party considered whether these provisions would be inserted most appropriately in Chapter IV, possibly in Article 42, but, on the understanding that special arrangements might be required by India and Pakistan on important matters such as investments, commodity agreements and other matters outside the scope of Chapter IV, decided that it was not competent to judge on questions other than preferential trade arrangements and therefore the decision on the inclusion of the proposed provisions in the Charter would have to be taken by Committee VI.

ANNEX

Article 42

Territorial Application of Chapter IV

1. The rights and obligations arising under this Chapter shall be deemed to be in force between each and every customs territory which is a separate customs territory and in respect of which this Charter has been accepted by a Member in accordance with Article 59.
2. For the purposes of this Article Chapter a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of substantially all the trade of such territory with other territories.

Article 42A

Frontier Traffic

The provisions of this Chapter shall not be construed to prevent

- (a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or
- (b) advantages accorded to the trade with the free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace.

Article 42B

Customs Unions and Free-Trade Areas

1. Members recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the parties to it and not to raise obstacles to the trade of other Members with such parties.
2. The provisions of this Chapter shall not therefore be construed to prevent [(a).....; or (b)] the formation of a customs union or the establishment of a free-trade area or the adoption of an interim agreement necessary for the [attainment] formation of a customs union or a free-trade area;* Provided, that:
 - (a) with respect to a customs union, or an interim agreement leading to the establishment of a customs union, the duties and other regulations of commerce imposed by, or any margins of

* The Working Party reserved for examination by the Sub-Committee the question whether the provisions of paragraph 2 should or should not apply to customs unions and free-trade areas of which one or more parties are not Members.

/preference

preference maintained by at the institution of any such union or interim agreement in respect of trade with Members of the Organization shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b) With respect to a free-trade area, or an interim agreement leading to the establishment of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the establishment of such free-trade area, or the adoption of such interim agreement, to the trade of Members not participating in the arrangement shall not be higher or more restrictive than the corresponding tariffs and other regulations of commerce existing in the same constituent territory prior to the establishment of the free-trade area, or interim agreement, as the case may be; and

(c) any interim agreement referred to in sub-paragraphs (a) and (b) above shall include a plan and schedule for the attainment of such a customs union or the establishment of such a free-trade area within a reasonable length of time.

3. (a) Any Member deciding to enter into a customs union or a free-trade area, or an interim agreement leading to the formation of such a union or free-trade area, shall promptly notify the Organization and shall make available to it such information regarding the proposed union or free-trade area as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

(b) No Member shall institute or maintain any interim agreement under the provisions of paragraph 2 (b) of this Article. If, after a study of the plan and schedule proposed in such agreement, having studied the plans and schedules provided for in an interim agreement under paragraph 2, in consultation with the parties to that agreement and giving due account to the information made available in accordance with the terms of sub-paragraph (a), the Organization finds that such agreement is not likely to result in a customs union or in the establishment of a free-trade area within a reasonable length of time, the period contemplated by the parties to the agreement or that such period is not a reasonable

 /one, the

one, the Organization shall make recommendations to the parties to the agreement. If the parties are not prepared to modify the agreement in accordance with such recommendations they shall not maintain it in force or institute such agreement if it has not yet been concluded.

(c) Any substantial change in the plan or schedule shall /not be substantially altered without consultation with/ be notified to the Organization which may request the Members concerned to consult with it if the change seems likely to jeopardize or delay unduly the achievement of the customs union or the free-trade area.

4. For the purposes of this Charter:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) /all/ tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 43) /as between the territories of members of the union are substantially eliminated/ are eliminated on substantially all the trade between the constituent territories of the union or at least on substantially all the trade in products originating in such territories and

(ii) substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union, subject to the provisions of paragraph 5;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 43) between such territories are eliminated on substantially all the trade in products originating in constituent territories of the free-trade area.

5. The preferences referred to in paragraph 2 of Article 16 shall not be affected by the constitution of a customs union or a free-trade area but may be eliminated or adjusted by means of negotiations with Members affected. This procedure of negotiations with affected Members shall in particular apply to the elimination of preferences required to conform with the provisions of sub-paragraphs (a) (i) and (b) of paragraph 4.

/INTERPRETATIVE NOTE

INTERPRETATIVE NOTE

Paragraph 5.

It is understood that the provisions of Article 16 would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty and is reexported to the territory of another member of such union or area, the latter member should impose a duty equal to the difference between the duty already paid and the most-favoured-nation rate.

/NEW

NEW ANNEXES TO ARTICLE 16

ANNEX E

LIST OF PORTUGUESE TERRITORIES REFERRED TO
IN PARAGRAPH 2 (b) OF ARTICLE 16

Portugal and the Archipelagoes of Madeira and the Azores
Archipelago of Cape Verde
Guinea
St. Tome and Principe and Dependencies
S. Joao Batista de Ajuda
Cabinda
Angola
Mozambique
State of India and Dependencies
Macao and Dependencies
Timor and Dependencies

ANNEX H

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS
AMONG COLOMBIA, ECUADOR AND VENEZUELA
REFERRED TO IN PARAGRAPH 2 (e) OF ARTICLE 16

Preferences in force exclusively between two or more of the following
countries:

Colombia
Ecuador
Venezuela

ANNEX I

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS
AMONG THE REPUBLICS OF CENTRAL AMERICA
REFERRED TO IN PARAGRAPH 2 (e) OF ARTICLE 16

Preferences in force exclusively between two or more of the following
countries:

Costa Rica

/El Salvador

El Salvador
Guatemala
Honduras
Nicaragua
