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SUMMARY RECORD OF THE THIRTIETH MEETING

Held at the Capitol, Havana, Cuba,

31 January 1948, 10.30 a.m.

Chairman: Mr. D. L. WILGRESS (Canada)

1. REPORT OF SUB-COMMITTEE C (E/CONF.2/C.3/38 and Add.1)

Mr. MORTON (Australia) as its Chairman, presented the report of Sub-Committee C (E/CONF.2/C.3/38), recommending that Committee III should approve the revised text of the Articles of Section E of Chapter IV as well as the proposed Interpretative Notes. Concerning Item 3 of Addendum 1 to the report presented by the delegation of Argentina, special attention had been already paid to the expression "fees and charges" in the Spanish translation of the Report. In order to make clear the intention of Article 35, paragraph 1 included the phrase "other than import and export duties, and other than taxes within the purview of Article 18 of the Geneva draft".

The Sub-Committee had given the fullest attention to the wishes of the General Committee regarding the possible elimination of Interpretative Notes appearing in the Geneva Draft. A masterly compromise had been achieved as regards Article 33; the Committee might wish to hold in suspense final consideration of the last sentence of paragraph 6 pending the established text of paragraph 1 of Article 27. Concerning the proposed Interpretative Note (ii) to paragraph 3 of Article 34, it was the opinion of the Sub-Committee that when, in the circumstances indicated, a Member proposed to change the established value of a given product, the Member should either change the ad valorem duty to a specific duty, or should assess the actual value of each individual importation in accordance with that paragraph. A new paragraph (No. 6) had been tentatively added to the proposed text of Article 35. The deletion of Article 39 was recommended.

The subject matter of Section E of Chapter IV dealt with matters of administration and practice of various governmental Departments generally, and of Customs Departments principally; the success of the work of the Drafting Committee in New York could be measured by the little change in substance deemed necessary both in Geneva and Havana.

/The CHAIRMAN

The CHAIRMAN congratulated the Sub-Committee and its Chairman on their excellent work, and moved the second reading of Section E of Chapter IV.

ARTICLE 32 - Paragraph 1

Mr. PELLIZA (Argentina) stated that his delegation maintained its reservation to paragraph 1. Discussions in Sub-Committee had not clarified the full scope of the provision. The complicated matters of transport in general could best be dealt with by a special international conference to be called for that purpose. However, in view of the discussions of the Sub-Committee, the amendment to delete paragraph 2 could be withdrawn.

Paragraph 1 Interpretative Note - approved without comment.

Mr. MULLER (Chile) said that although in Sub-Committee it had been stated that his amendment was covered by the Article itself, the reservation of his delegation to paragraph 2 should be maintained pending instructions from his Government.

The CHAIRMAN asked the representative of Chile to inform the Secretariat as to his position.

Mr. FORTHOMME (Belgium) approved the deletion of the Note appended to paragraph 5 of the Geneva Draft. Transportation charges should not be included in an Article on Freedom of Transit; he also thought that the new paragraph 8 was superfluous.

The CHAIRMAN stated that paragraphs 3 and 8 should be examined by the full Committee after the text of Article 18 was established.

Paragraphs 4, 5, 6 and 7 - approved without comment.

New Paragraph 9

Mr. MULLER (Chile) stated that with a view to clarifying paragraph 9, he had suggested an Interpretative Note to the effect that if, as a result of the negotiations with a country which had no access to the sea, a Member granted broader facilities of transit, such facilities could only be claimed by countries in the same geographical situation. The Note had not been accepted by the Sub-Committee although there would have been no limitation to freedom of transit, no breach of the most-favoured-nations clause, nor discrimination, but equality of treatment under equal conditions. If that interpretation were not accepted, the delegation of Chile reserved its position to the whole of Article 32 pending instructions from its Government.

Mr. PELLIZA (Argentina) supported the representative of Chile, The purpose of paragraph 9 was to favour countries which had no access to the sea, but it would be difficult to grant the same privilege to others not in a similar geographical situation. If the Chilean Note were not included, the reaction would be to withdraw, limit, or not to expand some of the present agreements by which special facilities were granted to land-locked countries.

/Mr. GUTIERREZ (Bolivia)

Mr. GUTIERREZ (Bolivia) felt that while paragraph 9 did not entirely satisfy the conditions of countries like his own, it was a compromise which contemplated favourably the important and significant situation of a land-locked country. Bolivia imported and exported through Chilean ports, benefiting from advantages granted by special treaties through the good-will of Chile; however, if paragraph 9 were applied under the concept of the most-favoured-nation clause, Chile would be forced to give identical favours to others not in the same geographical situation. Land-locked countries should not have existing treaties annulled by the new contradictory, self-defeating paragraph 9 which might place such countries at a disadvantage when negotiating new agreements.

Mr. HAI AZIZ (Afghanistan) said that the question of freedom of transit was of vital importance to his country. Paragraph 9 should not be obscured; he supported the statement of the Bolivian delegate and stated that the Afghanistan delegation could not accept any restrictive interpretation of Article 32 that would in any way limit freedom of transit.

Mr. MORTON (Australia) stated that Article 32 clearly specified that, subject to the restrictions of paragraph 3, there should be full freedom of transit through all countries. It had been realized that certain factors beyond the scope of full freedom of transit might involve the most-favoured-nation principle; paragraph 9 authorized studies by the Organization. It was within the province of the Organization, when dealing with agreements granting special facilities, to say that such privileges could not be obtained by other countries; nor would another but a land-locked country probably ask for them.

Mr. MARTIN (United States of America) supported the representative of Australia. The suggestion that paragraph 9 especially favoured land-locked countries might lead to the implication that it was disadvantageous to seaport countries. The paragraph stated that the Organization might undertake studies but said nothing about negotiating, noting the necessity of direct negotiation between Members. "Equitable use" was a flexible term underlying many principles of Chapter IV. It had always been the understanding of the Preparatory Committee that, concerning this Article, equitable use meant the fair and reasonable use of transit facilities in the particular circumstance, that is, equitable to the country which needed the transit facilities, equitable to the country through which the transit passed, and equitable to third countries.

Mr. MULLER (Chile) reiterated that he was not in opposition to freedom of transit but if a precise definition of the special privileges were not given, other nations would be able to claim special privileges granted to land-locked countries. The purpose of his proposed Note was to limit special
/privileges to

privileges to land-locked countries but no infringement of the principle of freedom of transit was intended.

Mr. TERRA (Uruguay) supported the representative of Chile.

Mr. HAI AZIZ (Afghanistan) thought that the Sub-Committee's interpretation of "equitable use" precluded the necessity of the Chilean Interpretative Note.

Mr. NORIEGA-MORALES (Guatemala) felt that the Chilean Note established more clearly that more favourable treatment could be given a Member in a peculiar geographical situation. Guatemala granted El Salvador the use of an Atlantic port but it would not be inclined to make a similar concession to another country if it were not in a similar geographic situation.

Mr. MORTON (Australia) said the Charter was founded on the principle of most-favoured-nation treatment. If agreements between countries granted certain favours which in the opinion of the Organization did not contravene the most-favoured-nation principle, there would be no objection; if such were the case, the Organization would certainly wish to protect a complaining Member.

Mr. ASHFORD (United Kingdom) supported the remarks of the representatives of Australia and the United States. The Article provided for the general principle of freedom of transit and called for studies to be made by the Organization; this was all that could be required.

Mr. CHANG (China) said that China had entered into an agreement with the USSR which had gone beyond the scope of freedom of transit. There was a great deal of merit in the Chilean Interpretative Note that such special facilities should not be considered according to the requirements of the most-favoured-nation treatment.

Mr. MULLER (Chile) said that after the statements of the representatives of Australia and the United Kingdom, the inclusion of his Interpretative Note was of even more importance. Political implications which might be involved in granting special facilities were outside the province of the Organization.

Mr. SPEERKENBRINK (Netherlands) supported the remarks of the representatives of Australia, United Kingdom and United States that it would be dangerous to dispense with the most-favoured-nation aspect. Agreements between two countries were understandable but factors involving third and fourth countries should not be overlooked.

After discussion, it was agreed to establish Working Party No. 1 to consider the proposal of the representative of Chile and the advisability of adding an Interpretative Note or altering the text of Article 32, taking /into account any

into account any other Articles considered advisable; the Working Party to consist of the representatives of Afghanistan, Australia, Bolivia, Chile, China, Netherlands, United Kingdom and the United States.

The CHAIRMAN stated that Article 32 was passed in second reading with the reservations of Argentina and Chile, and subject to consideration of paragraphs 3 and 8 after Article 18 had been established, and to the report of Working Party No. 1 on the Interpretative Note proposed by the delegation of Chile.

ARTICLE 33

Mr. McLIAM (Ireland) asked whether an anti-dumping or countervailing duty could be imposed upon a duty which had been bound. He suggested the inclusion of a clause similar to Article II, paragraph 2 (b) of the General Agreement.

Mr. MORTON (Australia) replied that anti-dumping duties had no relation to normal customs duties, bound or otherwise.

Mr. MARTIN (United States of America) said there was no need to include the clause from the General Agreement since the Charter did not contain schedules of duties which were included in the General Agreement.

Mr. FRESQUET (Cuba) remarked that when a duty was not bound, rates could be increased freely with no reference to dumping.

Upon the request of the representative of Ireland that the interpretation be included in the Committee Report, the CHAIRMAN said it would be sufficient to take note of the subject matter in the Summary Record.

Upon the request of Mr. COREA (Ceylon) for a definition of "for the like products", Mr. MORTON (Australia) said it meant in this instance the same product.

Mr. TINOCO (Costa Rica) requested that the Drafting Committee should note that "similar" was the word used in the Spanish text. This was not the equivalent of "the same".

To the question of Mr. HAIDER (Iraq) as to whether a Member had only to prove dumping or had also to prove that dumping caused or threatened to cause material injury, Mr. MORTON (Australia) replied that paragraph 6 required determination that the effect of dumping or subsidization was to cause or threaten to cause material injury.

Mr. HAIDER (Iraq) asked whether "materially retards" meant that an industry might become economically unprofitable because of dumping, to which Mr. MORTON (Australia) replied that might be one of the interpretations.

Mr. MULLER (Chile) asked whether provision was made for possible injury to a third party exporting a product at normal prices to a country where there was no like industry in the event a country was dumping in that country.

/Mr. MORTON (Australia)

Mr. MORTON (Australia) said that as a rule a country having no domestic industry would not object to selling goods at a lower price; but in the event that dumping caused injury to a third country, paragraph 6 authorized the Organization to waive the requirements of that paragraph so as to permit a Member to impose anti-dumping or countervailing duties if material injury resulted to a third Member country.

Paragraph 1, Interpretative Note - approved without comment.

Paragraph 2

At the suggestion of the representative of Ireland, the Chairman agreed that the Drafting Committee should examine the second sentence concerning margin of dumping.

Paragraph 2, Interpretative Note; Paragraph 3; Paragraph 3 Interpretative Note and Paragraphs 4 and 5 - approved without comment.

Paragraph 6 - final acceptance was postponed pending any major alteration to paragraph 1 of Article 27.

Deletion of Former Paragraph 6

To the request of Mr. FORTHOMME (Belgium) for an explanation of paragraph 1, page 8 of the Sub-Committee Report, Mr. MORTON (Australia) referring to the two reports of the Working Party (document E/CONF.2/C.3/18), replied that paragraph 6 of the Geneva text limited a country's rights regarding Articles 13 and 14. Opinion was divided, so the Sub-Committee recommended deletion of the paragraph on the expressed understanding that no measures other than anti-dumping or countervailing duties should be applied to counteract dumping except as such measures might appear in the Charter, for instance, as regards economic development under Article 13.

Reservation of Argentina to Article 33

Mr. PELLIZA (Argentina) said that the report of the Working Party was conciliatory but the text remained insufficient, particularly regarding penalties; he had proposed a new paragraph to the effect that if the exceptional circumstance in which measures were contemplated were insufficient to counteract dumping, the countries affected by dumping might adopt other measures provided for by their legislation, bringing such measures to the attention of the Organization.

The report of Committee III should take note of the reservation of Argentina.

ARTICLE 34

Paragraphs 1, 2, 3 (a) and 3 (b) (- approved without comment.

Paragraphs 3 (b) - Interpretative Notes

Mr. BANERJI (India) said that India's system of tariff valuation had been explained at Geneva and his delegation had been told that although

/Article 34,

Article 34, paragraph 3 (b) dealt with actual valuation, a system like India's would not be affected. The Interpretative Note seemed to be a recognition of that right, but the Report of the Sub-Committee (page 9, paragraph 4) noted that it should not be compatible with the letter or spirit of Article 34 to accept the principle of variable schedules of fixed values for products as a basis of ad valorem rates of duty. Did Note (ii) mean the system remained unchanged, or that the value remained unchanged?

Mr. MORTON (Australia) stated that the Sub-Committee had given considerable attention to the position of countries which had established values for certain products as the basis of their ad valorem duties. When an ad valorem duty was applied to a long established value, it had all the elements of a specific duty, and usually there was no objection to that, until such time as a change in the value was effected. Then the country had a choice of change-over to a specific duty or of assessing the actual value for duty purposes of each shipment, in accordance with the terms of paragraph 3. This appeared the only course of action in the case of ordinary products the value of which could be easily ascertained.

However, in Geneva when India's fixation of values in regard to certain products had been discussed, it was considered that the method of valuation by India for non-ordinary products was in order insofar as the actual value could not be readily ascertained under paragraph 3 (b), and that paragraph 3 (c) met the problem of India in respect of those particular products for which they found it necessary periodically to fix a value.

Upon the request of the representative of India that the interpretation be included in the Report of the Committee, the CHAIRMAN said it would be sufficient for the purpose to note it in the Summary Record.

Mr. MULLER (Chile) said that his amendment had the purpose of bringing into agreement with Article 34 legal provisions of Chile and other countries. The reservation would be maintained pending instructions from his Government, unless the following Interpretative Note could be added to Interpretative Note (ii):

"In future, the continuance of the system referred to in this Note shall be permitted, provided that, on the request of interested parties or Members, periodically established values for a specified product will be adjusted according to actual value".

Mr. BANERJI (India) supported amendment proposed by the representative of Chile. The Indian and Chilean systems had practical advantages under the peculiar circumstances of administration. The Chilean proposal, or a modified version, should be considered by a Working Party.

/The representatives

The representatives of Afghanistan and Venezuela supported the representative of Chile.

By vote of 16 to 15, the Chairman noted a distinct division of opinion concerning the proposed Interpretative Note and it was agreed that Working Party No. 2 composed of the representatives of Afghanistan, Belgium, Chile, India, United Kingdom and the United States should consider the proposal of the delegation of Chile.

Mr. MacLIAM (Ireland) asked the purpose of Interpretative Note (i) and whether it would give advantage to a government over private industry.

Mr. MORTON (Australia) replied that if a government made a contract to import a particular primary product, the price would form the basis for the duty, which would then be added; there would be no distinction between the private contractor and the government except that in the case of a government the duty was a book entry. He had seen no value of or objection to the insertion of the clause.

Paragraph 3 (c) - approved without comment.

The meeting rose at 1.20 p.m.
