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THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

Held at the Capitol, Havana, Cuba, 5 February 1948, 10.30 a.m.

Chairman: Mr. Carlos LLERAS (Colombia)

1. REPORT OF SUB-COMMITTEE C - ARTICLE 37, PARAGRAPH 3, ARTICLE 38 and ARTICLE 39 (E/CONF.2/C.3/38 and Add.1)

ARTICLE 37

Paragraph 3 (a) - was approved.

Paragraph 3 (b) - approved without comment.

Paragraph 3 (c)

Mr. PELLIZA (Argentina) maintained his reservation. The Argentine delegation proposed the deletion of the last two lines of paragraph 3 (c) because it felt the provision was impractical and inappropriate; intervention by the Organization would conflict with the sovereignty of Members. Implementation of Article 37 would be fully insured by submitting the information requested, without the Organization having to determine whether the procedures conformed to the requirements of the sub-paragraph.

Mr. TERRA (Uruguay) supported the Argentine amendment.

ARTICLE 38

Paragraphs 1, 2, 3, 4, 5, 6 and 7 - approved without comment.

ARTICLE 39

Mr. BRUDZINSKI (Poland) said that if the recommendation to delete Article 39 was accepted, it should be clearly stated that boycotts were against the spirit of the Charter.

Mr. MORTON (Australia) agreed that it should be recorded that boycotts as such were contrary to the Charter and a Member affected by their use had the right to complaint under various Sections of the Charter. Article 39 had been modified to a state of complete ineffectiveness from its original intention to prevent campaigns for use of home products, and its deletion was recommended inasmuch as no Member was prepared to give up slogans like "Buy national goods."

/The CHAIRMAN

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(85.)

The CHAIRMAN remarked that in case of boycotting, a Member had recourse to Articles 89 and 90.

The Report of Sub-Committee C was approved, subject to outstanding decisions awaiting actions of other Sub-Committees, and reservations recorded by various delegations.

2. REPORT OF SUB-COMMITTEE D - ARTICLES 40, 41 and 43 (E/CONF.2/C.3/37 and Corr.1)

ARTICLE 40

The delegation of Peru maintained its reservation to Article 40.

The delegation of Argentina maintained its provisional reservation to Article 40 pending the final text of Articles 22 and 23.

Paragraph 1 (a)

Mr. CORIAT (Venezuela) suggested substituting "Charter" in place of "Chapter" in the second line of paragraph 1 (a) in order to include all other obligations of the Charter which might cause or threaten to cause injury. He particularly referred to Articles 3 and 9, as mentioned in Article 21, paragraph 3 (b).

Mr. SAENZ (Mexico) supported the proposal of the representative of Venezuela. Domestic policies designed to stimulate industries could create injurious abnormal demands for imports; therefore, either by accepting the amendment or by so stating in the Report, Articles 3 and 9 should be included.

Mr. SHACKLE (United Kingdom) thought that Article 21 provided the remedy sought but suggested the point deserved special investigation.

Mr. SPECKENBRINK (Netherlands) called attention to a discrepancy which would occur in paragraph 4 if paragraph 1 (a) were altered. He thought that the proposal of Venezuela was too sweeping.

It was agreed that the matter should be considered by Working Party No. 5 composed of the representatives of Venezuela, Mexico, United Kingdom and United States of America.

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

Paragraph 3 (a)

Mr. PELLIZA (Argentina) maintained his reservation consistently with the general attitude of his delegation concerning the limitations of the powers and functions of the Organization.

Paragraphs 3 (b) and 4 - approved without comment.

Footnote to Article 40

Mr. BAYER (Czechoslovakia) requested the deletion of the footnote because Article 40 concerned emergency action on imports of particular products and was therefore an exception from the general principle of non-discrimination. The application of Article 40 would in many cases be

/discriminatory ex

discriminatory and the footnote might create a chain of withdrawals of concessions. Moreover, if the footnote was retained, Article 40 provided no defense measure in the case of social dumping; the non-discriminatory application of quantitative restrictions in that instance would cause hardship to other Members.

Mr. SHACKLE (United Kingdom) stated that the intention of the Article was set forth in the Footnote. Paragraph 3 (a) offered counter-action against emergency actions; the phrase "to the trade of the Member" showed a discriminatory characteristic not evident in the other paragraphs. Before altering their non-discriminatory concept thorough consideration should be given to a written proposal.

The Sub-Committee considered (E/CONF.2/C.3/37, page 4, paragraph 20) that if there was a flood of imports due to social dumping, under paragraph 1 of Article 40 a non-discriminatory measure, could be invoked for short-term purposes. For longer-term purposes, if another Member was not complying with the provisions of Article 40, complaint could be made under Articles 89 and 90.

The general intent of Article 40 was to provide time to rectify possible miscalculations of a concession. Since concessions were negotiated on a non-discriminatory and most-favoured-nation basis, their withdrawal should also be on that basis.

Mr. MARTIN (United States of America) added that the footnote did not preclude the allocation of quotas provided for in Article 22.

Mr. RODRIGUES (Brazil) agreed with the statement of the representative of the United Kingdom but suggested a drafting change in the footnote to ensure that the intention of the action was non-discriminatory.

Mr. SHACKLE (United Kingdom) said the intent of the footnote was that any action, except that taken under paragraph 3 (a), should be in conformity with the most-favoured-nation concept.

It was agreed that the proposals of the delegations of Czechoslovakia and of Brazil should be considered by Working Party No. 4 composed of the representatives of Brazil, Czechoslovakia, United Kingdom, and the United States of America.

ARTICLE 41

It was agreed to draw the attention of the Central Drafting Committee to the addition of the words relating to practices affecting transit.

The Article was approved.

ARTICLE 43

Paragraph 1 - Preamble (a) (i) and (ii) - approved without comment

/Sub-paragraph (a) (iii)

Sub-paragraph (a) (iii)

Mr. SAENZ (Mexico) asked whether Article 43 would permit any country which had already entered into bilateral agreements with other countries regarding the import or export of gold and silver to apply certain restrictions to the free import or export of those metals which were not provided for in the bilateral agreement.

Mr. SHACKLE (United Kingdom), Chairman of Sub-Committee D, said that it was his understanding that if Countries A and B had entered into a bilateral agreement which did not provide an exception in respect of restrictions on gold and silver, and those two countries became parties to a subsequent multilateral convention which did permit import restrictions regarding those goods, then the provisions of the later agreement would be held to override the earlier one. He felt however that this was a purely legal point of general treaty interpretation on which he hesitated to express any definite opinion.

Mr. SAENZ (Mexico) wondered whether the interpretation given by the representative of the United Kingdom would apply in the case of the General Agreement on Tariffs and Trade and whether that Agreement would be superseded by the Charter of the ITO.

Mr. MARTIN (United States of America) referred to the words "nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Member of measures", appearing in paragraph 1, and said that if there was an agreement between Country A and Country B that there should be no restriction and no prohibition of the movement of gold and silver, and the two countries subsequently subscribed to the Charter he felt that the agreement would not be superseded by the Charter. So far as the General Agreement on Tariffs and Trade was concerned, it was his understanding that the parties to that Agreement would meet to determine which provisions should be modified in accordance with the Charter adopted at Havana.

Mr. SPECKENBRINK (Netherlands) said it had always been his understanding that existing bilateral treaties would have to be modified to bring them into harmony with the provisions of the General Agreement on Tariffs and Trade. This will not be done automatically; a Member, party to such treaty, will have to approach the other party with the view to negotiate on such existing treaty. If the treaties could not be so modified, then they would have to be terminated.

Mr. FRESQUET (Cuba) felt that paragraph 1 of Article 43 might be interpreted as freeing members from the obligations laid down in Chapter IV and did not relate in any way to the previous obligations incurred by Members in any bilateral agreements which they might have concluded. If no bilateral agreement existed then a Member was free, in the specific cases laid down in Article 43, from the obligations of Chapter IV. If, however, there was

/in existence

in existence a bilateral agreement whose provisions curtailed the general exceptions to Chapter IV laid down in Article 43, then that agreement should not be superseded by the Charter.

Mr. IGONET (France) endorsed the statement made by the representative of the Netherlands, and said that there should be no discrepancy between the General Agreement on Tariffs and Trade and the corresponding Articles of the Charter. He also supported the remarks of the representative of Cuba. The Charter had a general scope and any bilateral agreements between Members might bind the parties concerned without entering into conflict with the general text of the Charter.

The CHAIRMAN shared the opinions expressed by the representative of Cuba and of France and said that these opinions would be recorded in the Record of the meeting.

The representatives of the Netherlands, Mexico and Uruguay reserved the right to return to the question of interpretation at a later stage.

Mr. CHOUHY TERRA (Uruguay) pointed out that his delegation had submitted an amendment to sub-paragraph (a) (iii) which would constitute a new sub-paragraph 2 (a). He would therefore have to reserve the position of his delegation until that amendment was considered by the Committee at its next meeting.

Sub-paragraphs (a) (iv), (v), (vi) and (vii) were approved. The delegation of Australia maintained its reservation in respect of sub-paragraph (a) (viii) subject to the final wording of Article 94.

Sub-paragraphs (a) (ix) and (x) were approved without comment.
Sub-paragraph (a) (xi)

Mr. PELLIZA (Argentina) said his delegation maintained its proposal that the last part of sub-paragraph (a) (xi), commencing with the words "during periods when the domestic price", should be deleted, as that was a matter of fundamental importance to Argentina. He drew the attention of representatives of countries in a similar position to that of his own to the damage which might be caused to the future industrial development of those countries if the conditional clause in sub-paragraph (xi) were maintained. There was a lack of consistency between the clause in question and the first part of the sub-paragraph, and a total lack of agreement between the clause and paragraph 2 (a) of Article 20 which permitted export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member. Argentina had been obliged to take restrictive export measures to avoid certain important branches of industry being paralyzed owing to lack of raw materials.

/He would be forced

He would be forced to reserve the right of his delegation to bring the matter up in plenary session of the Conference if the amendment he had suggested was not accepted.

Mr. MULLER (Chile) and Mr. RUBEN JIJON (Ecuador) supported the amendment proposed by the representative of Argentina.

Mr. SAENZ (Mexico) and Mr. McCARTHY (Ireland) although supporting in principle the amendment submitted by the representative of Argentina, felt that it was unnecessary in view of the interpretation contained in paragraph 2 (a) of Article 20.

Mr. SPEEKENBRINK (Netherlands) could not support the amendment as it was of such a nature that it would change the whole sense of Article 43.

Mr. MORTON (Australia) pointed out that sub-paragraph (xi) had been inserted in the text to enable countries which maintained the domestic price of an article below the world price to ensure that the whole of their raw materials was not exported at a higher price and that sufficient raw materials remained to cover the requirements of local industries. It was clear that the local industry was being subsidized when it obtained materials at prices lower than the world price under a government subsidization or price stabilization scheme.

Mr. MARTIN (United States of America) agreed with the representative of the Netherlands that the amendment would fundamentally change Article 43. It would permit a country to restrict exports for the sole purpose of protecting domestic industry, and Article 43 was not designed to achieve such an end. It was simply a listing of the general exceptions usually recognized in commercial treaties.

Mr. SHACKLE (United Kingdom) endorsed the observations of the representatives of the Netherlands and of the United States of America, and said that the amendment in question would be more appropriate in Article 20.

Mr. IGONET (France) felt that the attention of the Second Committee should be called to the fact that the problem of quantitative restrictions could apply to exports as well as to imports.

He supported the remarks of the representative of the Netherlands regarding the amendment submitted by the delegation of Argentina. The measures referred to in sub-paragraph (xi) were of a temporary nature, and were not designed with a view to promoting economic development programmes.

Mr. CHOUHY TERRA (Uruguay) said that the matter under discussion was so technical that it should be submitted to a small working group for study, and that the correlation of Article 43 with other Articles of the Charter should be carefully considered.

/Mr. FRESQUET (Cuba)

Mr. FRESQUET (Cuba) supported the text of sub-paragraph (xi) as it appeared in the Report of the Sub-Committee. He felt that if the text of Article 43 were limited as suggested by the representative of Argentina, the industries of Cuba, which needed to import raw materials, might suffer grave injury. There was the danger, also, that dumping might occur.

After a brief discussion in which the representatives of Argentina, the United States of America and the CHAIRMAN took part, the Committee decided not to refer the amendment submitted by the delegation of Argentina to a Working Party.

Mr. HAIDER (Iraq) asked whether the conditions laid down in sub-paragraph (xi) would in any way restrict the meaning of paragraph 2 (a) of Article 20 when finally drafted.

Mr. MARTIN (United States of America) considered that if an exception was written in paragraph 2 (a) of Article 20 it would not be nullified by Article 43.

Mr. FRESQUET (Cuba) felt that if another Article of the Charter established more liberal provisions regarding exceptions to Chapter IV those provisions would supersede the ones contained in Article 43.

The Committee approved sub-paragraph (a) (xi) the representatives of Argentina, Uruguay and Ecuador reserving the position of their delegations.

The meeting rose at 1.05 p.m.
