

SIXTH COMMITTEE: ORGANIZATION

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at the Capitol, Havana, Cuba  
Thursday, 18 December 1947 at 4.00 p.m.

Chairman: Mr. Erik COLBAN (Norway)

It was agreed the delegate of El Salvador should replace the delegate of Chile in the Sub-Committee on Article 75 as the latter delegate would be unable to participate.

Mr. MACHADO (Cuba) said that he wished to present for the Drafting Sub-Committee's consideration, a drafting amendment to Article 78, paragraph 2, in order to make quite clear that the Organization could make only general recommendations to specialized agencies for co-ordination of work. The Spanish text of that paragraph was not very clear.

The CHAIRMAN noted general agreement with the Cuban suggestion. He said that the Second Committee had decided to add Brazil to the Joint Sub-Committee of the Second and Sixth Committees.

The Committee agreed with the decision of the Second Committee.

The CHAIRMAN noted that the representative of Czechoslovakia had presented some amendments to Article 69 (c) and 75 (document E/CONF.2/C.6/12/Add.3). The amendment to Article 69 might be discussed at the second reading, while the amendment to Article 75 could be referred to the Sub-Committee.

DISCUSSION OF ARTICLE 81

The CHAIRMAN explained that amendments had been presented to Article 81, paragraph 1, by the representatives of Italy, Mexico and Peru.

Since the Third Committee's decision on Article 17 and another Peruvian amendment presented there would influence the decision with regard to the present amendment of Peru, he suggested that the latter should be passed over for the time being.

Mr. ALAYZA (Peru) agreed with the Chairman's suggestion.

The CHAIRMAN then turned to the consideration of the Italian and Mexican amendments.

/Mr. MONDELLO

Mr. MONDELLO (Italy) explained that in view of the doubts of some countries, not represented at the Preparatory Committee regarding the criteria for the Tariff Committee's decisions and their revision under Article 89, paragraph (c) especially as it affected the provisions of Article 99, his delegation had suggested an amendment to the text of Article 81. It consisted of two parts: First, the criterion for the decisions to be taken by the Tariff Committee, which would consist of the contracting parties to the General Agreement on Tariffs and Trade with regard to tariff reductions negotiated by other states under Article 17. Although Italy would probably not be affected directly, it felt that the matter was important to other countries. The formula suggested was of a general character and similar to that of Articles 90, paragraph 4; 91, paragraph 4; and 93, Alternative A, paragraph 2. The second part of the amendment concerned revision of the Tariff Committee's decisions; it was to make clear, in the Charter, that the decisions of the Tariff Committee, as well as those of the Conference and the Executive Board, would be subject to revision.

Mr. KOJEVE (France) agreed with the representative of Italy with regard to the importance of appeal to the International Court of Justice, but suggested that discussion of the amendment should be postponed until consideration of Article 91.

Mr. HOLMES (United Kingdom) sympathized with the motives of the Italian amendment but thought that it was rather vague and might lead to future controversies. He reserved the position of his delegation.

As regards the Tariff Committee itself, he explained that one of the purposes of the Organization was to reduce tariff and other trade barriers in accordance with the provisions of Article 17 of the draft Charter. Tariff agreements, such as those that had already been successfully negotiated by some countries in Geneva, required the supervision of the Tariff Committee. It was logical to limit the specialized function of supervision of those Tariff agreements to countries which had carried out their obligations under Article 17. The Tariff Committee's special membership and consequent independent character and function had caused confusion and even the suspicion that the Tariff Committee would be an exclusive club inaccessible to countries with no basis to carry out the undertakings contained in Article 17, and that the club's exclusiveness would enable the members to exercise unduly powerful influence over the work of the Organization. The experience in Geneva had shown that most countries could find a basis for tariff agreements, but, in his opinion, even the fact that

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some countries would not negotiate Tariff agreements would not necessarily give sufficient ground to oppose their admission to the Tariff Committee. Furthermore, the draft Charter contained provision in Article 89 for adjustment of inequities through consultation between the members. The Tariff Committee would not necessarily be permanent; once a sufficient number of members of the Organization had joined it on the basis of Tariff agreements and its membership was equal to that of the Conference of the Organization, appropriate changes in Article 81 could be made. If adopted in principle, the amendments to the Article 81 could be referred to the Third Committee for examination in connection with Article 17.

Mr. AMADOR (Mexico) felt that the first part of the Italian amendment might lead to misinterpretation and, furthermore, was superfluous in the light of the Mexican amendment and the provisions of Articles 89, 90 and 91, which provided for appeal to other bodies against the Tariff Committee's decisions. The Mexican proposal was not based on the assumption that the Tariff Committee would necessarily make unjust decisions and the United Kingdom representative's explanations were re-assuring; nevertheless, need for appeal might arise. He agreed with the intentions of the second part of the Italian proposal but pointed out that under Article 91, paragraph 2, Members could request an appeal to the Court against decisions of the Conference; consequently, the Mexican proposal was more realistic and more in conformity with accepted procedure.

Mr. MONDELLO (Italy) agreed with the representative of Mexico that the latter's proposal was further removed from the original text than his. He thanked the representative of the United Kingdom for his explanations. As regards the first part of his amendment, he thought that it might be re-drafted in conformity with the text of Article 93, paragraph 2.

Mr. AUGENHALER (Czechoslovakia), while expressing no definite opinion on the matter, observed that other provisions of the Charter provided for "unreasonable" action on the part of the Conference and the Executive Board; the same should therefore apply to the Tariff Committee. In view of the fact that the Court reviewed legal questions, while the Tariff Committee would deal with commercial matters, he preferred the Mexican amendment.

Mr. STINEBOWER (United States) suggested that the first part of the Italian amendment should be discussed in connection with Chapter VIII. He noted that under Article 91, matters could be referred to the Court only through the Conference. He objected to the Mexican amendment

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because, while stating the obvious truth, it overlooked the procedure provided in Articles 89 and 90 for appealing to the Executive Board and the Conference. He therefore supported the Geneva draft of Article 81, paragraph 1.

Mr. MACHADO (Cuba) and Mr. GARCIA SERRANO (Uruguay) supported the Mexican amendment.

Mr. ALAYZA (Peru) pointed out that a provision that the Tariff Committee, in its decisions, should avoid causing unfair injury to Members, might involve the important question of determination of equilibrium between the interests of Members by the Tariff Committee. This would raise the question of the scope of its decisions and bring up the question of the jurisdiction of the Court.

Mr. RIVERA (Colombia) felt that the additions to Article 81 proposed by Italy were important. Decisions of the Tariff Committee regarding tariff agreements might affect other countries which were not parties to them. To protect those countries the rules of procedure of the Tariff Committee should provide that texts of agreements should be distributed to all Members of the Organization. As regards the second part of the Italian amendment, he felt that although provision for appeal was most important, commercial questions should not be sent to the Court directly, but referred to the Executive Board and the Conference first.

The CHAIRMAN thought that the first part of the Italian amendment, if accepted, should be included in Article 17 rather than 81. He therefore suggested that it should be referred to the Third Committee for consideration together with other amendments to Article 17.

With regard to the second part, it had been suggested that it should be considered with Chapter VIII. He then turned to the consideration of the Mexican proposal and explained that it was a question of repeating in Article 81 provisions implied in Chapter VIII. He suggested that the Committee might adopt in first reading the text of Article 81 unchanged in the second reading, in the light of decisions with regard to Article 17 and Chapter VIII, the Committee might decide whether the Mexican amendment was necessary.

Mr. GAZDER (Pakistan) suggested that the debate regarding the Mexican amendment be continued so that Article 81 could be disposed of.

Mr. VIRATA (Philippines) inquired, in view of the Mexican amendment's importance in the light of Article 17, paragraph 2, which provided for the withdrawal from membership in the Organization, whether it had been clearly established that the Tariff Committee had to report to the Board or to the Conference; to which the CHAIRMAN replied that the supreme position of the Conference was established in Article 70.

/Mr. AMADOR

Mr. AMADOR (Mexico) regretted being unable to agree with the Chairman's suggestion. The Mexican and Italian amendments were of too great importance to be passed over even at the first reading because Chapter VIII, Articles 89, 90 and 91, which dealt with the Settlement of Differences, did not anywhere mention the Tariff Committee. Article 81, on the other hand, did not include provisions permitting an appeal from the Tariff Committee's decision to either the Board or the Conference. Thus, aggrieved Members would be barred from any appeal altogether, and their interests might be seriously injured. He urged the Chairman to reconsider his stand and to include the Mexican amendment in Article 81, paragraph 1 on first reading.

Mr. TANGE (Australia) felt that before a decision was taken on the Mexican amendment it would be necessary to examine Article 89. Paragraphs (a) and (b) of that Article did not allow an appeal against a decision of the Tariff Committee while the meaning of paragraph (c), which spoke of "any other situation", would have to be considerably stretched to allow such an appeal. If Article 89 was meant to include such an appeal, it should state so more clearly.

He also suggested that the terms "unfair injury" in the Italian amendment, and "without sufficient justification" in Article 17, paragraph 2, might be discussed and clarified at the same time.

Mr. de VRIES (Netherlands) remarked that the word "determine" appeared only once in Article 17, paragraph 2, in the sense in which it apparently was used in Article 81, and that he was concerned about the implications of that wording. He further stated that the fact that Article 17, paragraph 2, allowed not more than 60 days for a Member's withdrawal, would in effect make it impossible for anybody to take an appeal from the Tariff Committee to the International Court of Justice. The whole matter should be discussed in co-ordination with the Third Committee.

Mr. FORTHOMME (Belgium) felt that there was need to keep the architectural order of the Charter intact. He said that Chapter VIII was the result of efforts to bring all provisions for the settlement of differences and revision of decisions together.

Mr. KOJEVE (France) believed that the Italian amendment should not be divided into two separate parts. As the term "unfair injury" was not a legally definable term, and as the determinations of the Tariff Committee might not be considered to be of a strictly legal nature either, the International Court of Justice might very well declare itself incompetent to deal with the matter. As far as the Mexican amendment he called attention to the implications of Article 17, and also agreed with the Australian representative's remarks about the uncertain meaning of Article 89, paragraph (c).

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Furthermore, certain variations in the text, such as when Article 79 spoke of "the Conference shall establish such Committees as may be required for the performance of the functions of the Organization...", while Article 81 said "There shall be..." and "shall act on behalf of the Organization...", might later give rise to far reaching interpretations.

The Mexican amendment would resolve those difficulties and make certain that Article 91 could be invoked after an appeal had been made to the Board and to the Conference.

Mr. BLUSZTEIN (Poland) remarked that the Peruvian amendment would help to clarify the situation by deleting the words "and determine". The Tariff Committee could then only make recommendations, while the Executive Board would make determinations or decisions. If the Geneva text of the Charter were adopted, it would grant very exceptional powers to the Tariff Committee.

The CHAIRMAN explained, in reply, that discussion of the Peruvian amendment had been postponed until a similar Peruvian amendment to Article 17 had been disposed of.

Mr. ALAYZA (Peru) emphasized that the substance of the proposal ought to be decided by the Sixth Committee, regardless of whether that was done in connection with Article 81 or at the time Chapter VIII was being discussed. On a point of order he proposed that in the second reading all such problems be considered by the Sixth Committee, or by a joint sub-committee, but in any event they should not be considered separately.

Mr. VIRATA (Philippines) repeated his question regarding the apparent discrepancies between Articles 17, 70, 81 and 89. If Article 89 allowed an appeal against the Tariff Committee's decisions, he was satisfied, particularly after the United States declaration; otherwise, he would endorse the Mexican amendment.

Mr. MACHADO (Cuba) warmly endorsed the Mexican amendment against which not a single representative had spoken. Chapter VIII did not provide for any appeal, either in the English or the French text, and the matter was too important to be left to free interpretation. The Mexican amendment should be adopted in first reading, but could be taken up again after Chapter VIII had been studied more closely.

The CHAIRMAN noted general approval with the proposition that the decisions of the Tariff Committee should not be final and asked whether it would be possible to accept that fact in first reading subject to any redraft which might be necessary in the light of the discussion of Article 89.

Mr. AMADOR (Mexico) declared it was of no consequence to him whether  
/his amendment

his amendment was incorporated in Article 81 or 89; it was only important to his delegation that decisions of the Tariff Committee could be appealed against.

Mr. STINEBOWER (United States) proposed the creation of a legal sub-committee of legal experts which might study Article 89 and report whether it considered it covered decisions of the Tariff Committee.

Mr. MONDELLO (Italy) endorsed the French representative's interpretation of the Italian amendment. He was not opposed to the inclusion of the amendment in Article 91, provided only that the Tariff Committee's decisions were not to be final.

Mr. AUGENTHALER (Czechoslovakia), in support of the Mexican amendment, reserved his right to introduce an amendment to Article 70, which would explicitly state that the Conference was the supreme body of the Organization to which appeals could be made from the decisions of all its organs.

Mr. LORETO (Venezuela) noted that in the present text of Article 74 it was specifically stated that the powers and duties of the Conference were limited by, and "subject to the provisions of Article 81". Therefore, the Tariff Committee had been explicitly exempted from the final authority of the Conference and unless the Italian or Mexican amendment was adopted, the Tariff Committee's determinations were obviously and unalterably final, regardless of Chapter VIII. Even if adopting the Italian amendment were adopted, Article 91 referred in paragraph 5 to the supreme authority of the Organization which was obliged to "modify" its resolutions or decisions after a differing opinion of the International Court; it was not the opinion of the International Court itself which decided the matter.

It was most important the changes be introduced so as to permit a review of the Tariff Committee's decisions and, for the reasons stated, he endorsed the Mexican amendment.

Mr. TANGE (Australia) suggested that an equitable solution had to be found to distinguish between those countries which had adhered already to the General Agreement on Tariffs and Trade and those which had not made yet tariff reductions required in Article 17. If, in accordance with Article 81, paragraph 2, all countries, after making tariff reductions, became members of the Tariff Committee, then the question would become purely academic. For the transition period, however, when perhaps only seventeen countries would have made such reductions, a different treatment would have to be accorded them. His delegation would have to reserve its position until the composition of the Committee and its voting majority had been determined.

Mr. DOMOND (Haiti) reserved his position in the present discussion

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until his delegation's amendment to Article 17 had been decided.

Mr. KOJEVE (France) endorsed the United States suggestion for the study of the matter by a sub-committee of legal experts who should also resolve the question of what conditions applied in appealing to the International Court of Justice, and under what conditions the Mexican amendment would prejudice that.

The CHAIRMAN declared that a sub-committee to study Article 81 would be appointed by him after the discussion of the remaining paragraphs. He agreed that the reference in Article 74 which the Venezuelan representative had called to his attention, was a most important one.

#### Paragraph 2

Mr. ALAYZA (Peru), in explaining his delegation's amendment referred to the remarks made by the United Kingdom representative, who had called the Tariff Committee an "exclusive club" and an "oligarchy". The Tariff Committee's powers were great and could not be appealed against, yet its composition did not reflect a representation of the Organization as a whole. Not only the original signatories, but all Members who engaged in international trade were interested in the Tariff Committee, which should, therefore, be more universal in its composition. If, on the other hand, the number of members were not limited, then the Tariff Committee would be a duplication of the Conference, and its operation would become much too cumbersome and unpractical in view of the continuous and permanent nature of its activities.

The Tariff Committee should be a technical group of fifteen members, named by the vote of the Conference, and should be subordinate to the Conference, as suggested in the Mexican amendment just discussed. The Tariff Committee would not only decide on tariffs and other charges, but also on taxes (pursuant to Article 18) and state trading (Article 31); Article 40, paragraph 4, would most likely also become its concern. A Tariff Committee composed of fifteen members would best represent all viewpoints, yet not be unwieldy.

Mr. KOJEVE (France) felt that a major question would have to be reopened unless the composition of the Tariff Committee remained as proposed in the Draft Charter. The Committee should have forty to fifty members who could, if they wished, appoint an executive committee of fifteen members, but that should be left to their own internal decision. It would be most anomalous to exclude the original signatories of the tariff agreement while including non-signatories in the Tariff Committee.

Mr. PARANAGUA (Brazil) quoted Article 74, paragraph 1 and the United States State Department Bulletin of 26 October 1947, to prove that under the present text the Tariff Committee was an autonomous body not responsible to

/the Conference.

the Conference. He inquired what would happen if, say, all fifty member-countries became Members of the Tariff Committee in which case an autonomous organization would be functioning by the side of the original Organization.

The CHAIRMAN thought that if the Mexican amendment was adopted, the reference to Article 81 in Article 74 would disappear. The Committee would have to decide ultimately whether the Tariff Committee was to be an autonomous body or a subordinate organ of the Organization.

Mr. STINEBOWER (United States) declared that he could not accept the Chairman's interpretation that the adoption of the Mexican amendment would logically imply the deletion of the reference to Article 81 in Article 74.

His delegation took a very serious view of the proposed amendment to paragraph 2. The central objective of the Organization was the reduction of tariffs and other obstacles to international trade. Only countries which had carried out the negotiations required by Article 17 should be members of the Tariff Committee—some countries present at the Conference had already done so and shown what could be done. Experience between the two World Wars showed the danger of adopting resolutions at international conferences which lacked any provision making for their implementation. Article 81 was one of the articles in the Charter which ensured this practice was not to be repeated and his delegation regarded it as of the highest importance.

Mr. GAZDER (Pakistan) supported the Geneva draft text of Article 81, paragraph 2; and Mr. KARMARKAR (India) endorsed the United States statement. Paragraph 3.

The CHAIRMAN remarked that the proposals of Cuba, Mexico and Peru were similar in substance. The voting question had been fully discussed previously and on that occasion a majority of the delegates had favoured the same principle as that embodied in these proposals. He did not propose to re-open the matter in connection with Article 81.

Paragraph 4.

Mr. MACHADO (Cuba) explained his amendment by remarking that any procedure other than a simple majority vote would make decisions too difficult, particularly if the present text were adopted with the attendant large membership of the Tariff Committee. A two-thirds vote would be too cumbersome in the very technical, administrative and executive tasks the Tariff Committee would be called upon to handle in an expeditious manner.

Mr. AMADOR (Mexico) explained that the two-thirds majority vote had been proposed by his delegation with the specific view to making a decision more

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difficult to arrive at in view of the fact that it could not be the subject of appeal. If, however, "unfair injuries" were eliminated by adopting the Italian amendment and if the Tariff Committee's decisions could be appealed before the Board or the Conference, then his delegation would be willing to withdraw its amendment.

Mr. AUGENIEHALER (Czechoslovakia) believed that in view of the grave determinations, amounting to sanctions which could be made under Article 17, paragraph 2, a two-thirds majority should be required in that particular instance. He would revise his position, if the provisions of Article 17, paragraph 2, were changed.

Paragraph 5

The CHAIRMAN stated that there had been no amendment offered to paragraph 5 which could therefore be considered as adopted.

The CHAIRMAN stated that in view of the importance of the issues raised under Article 81, he would allow delegates an opportunity of continuing the discussion at the next meeting. At the close of the discussion he would appoint a sub-committee.

It was agreed that the sub-committee would consider, inter alia, the Peruvian amendment to paragraph 1 and if it considered necessary consult with the proper authority of the Third Committee on the matter.

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