

THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE ELEVENTH MEETING (III a)

Held at the Capitol, Havana, Cuba, on Monday, 15 December 1947, at 4.00 p.m.

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

I. DISCUSSION ON ARTICLE 18 (First Reading)

1. Item 75 of Revised Annotated Agenda (document E/CONF.2/C.3/6)

Mr. GUERRA (Cuba) pointed out that item 75 should include a further amendment, namely, the deletion of the word "transportation" in the first sentence of paragraph 2 of Article 18, as well as the total elimination of the second sentence of that paragraph.

The whole structure of the present system in Cuba, both for railways as well as highway and maritime traffic, was based on the differential treatment now prohibited in the draft Charter.

The second amendment was intended to sanction the maintenance of exceptions in certain cases in order to protect domestic industries by means of internal taxes, such as was provided for under Articles 25 and 26 in regard to subsidies.

Mr. LEDDY (United States of America) thought there had been confusion in the interpretation of the Article, the second sentence of which, far from being a departure from the principle of national treatment, was intended to strengthen that principle and prevent its abuse. Illustrating the case of tung oil and linseed oil, which could be considered as competitive and substitutable, he stated that the United States, under the first sentence of paragraph 1 of the Article, would be required to apply the same taxation policy to a domestic product as to a like imported product. The first sentence was, however, qualified by the second because if no substantial domestic production existed, a tax could not be placed on tung oil in order to protect linseed oil which was not similarly taxed.

In regard to the United States amendment (item 74), the proposed additional paragraph was intended to cover cases where internal excise duties were, for administrative reasons, collected at the time of importation, as well as "mixing" regulations also enforced at that stage.

/Mr. GOMEZ (Brazil)

Mr. GOMEZ (Brazil) thought it was unreasonable to refuse countries the specific right of "mixing" and utilizing certain imported products in equal proportion, which was a necessity for the economic security of certain countries. The escape clauses in the Charter were restricted to the interpretation placed on them by the Organization. The principle underlying Article 18 should be brought into stricter conformity with Articles 9, 11, 13, 14 and 60.

Mr. LAMSVELT (Netherlands) wished to be sure that nothing in the text of paragraph 2 (Article 18) could be construed as allowing the re-establishment of differential transport charges tending to further national interests to the detriment of other countries. The pre-war "Seehafen-Ausnahmstarife" of Germany had greatly hampered the trade of Belgium and the Netherlands by diverting traffic to Bremen and Hamburg, instead of following the more natural routes over Belgium and Holland.

He requested, on behalf also of the Belgian delegation, to have once more placed on record the following footnote which had appeared in document E/PC/T/174 of 15 August 1947:

"Since the present paragraph 2 relates solely to the question of differential treatment between imported and domestic goods, the inclusion of the last sentence in that paragraph should not be understood to give sanction to the use of artificial measures in the form of differential transport charges designed to divert traffic from one port to another." With this footnote on record, no country could defend special discriminatory transport charges based on the words "economic operation of the means of transport."

With the suggestion of Cuba for the deletion of the word "transportation" the Netherlands delegation could not agree.

In reply to a question by Mr. CHAVEZ (Peru), the CHAIRMAN stated that under Article 18 conflict would arise in regard to the exemption from taxes on material imported for a given industry.

Mr. LEDDY (United States of America), replying to a question by Mr. DJEBBARA (Syria), stated that there was nothing in Article 18 to prevent taxes being imposed on privately owned motor-cars, but not on those used for public transportation.

Mr. STUCKI (Switzerland) felt that a clearer and more precise text should be drafted. Outlining the "Wahlen Plan" which had been put into force in Switzerland during the war and had greatly increased production, he asked whether such a system would be compatible with Article 18. The "Caisse de Compensation" was a war-time measure, which obliged the importer of certain commodities to contribute to a fund for Swiss producers with a view to maintaining domestic production of like commodities. He thought

/that such

that such a system was preferable to high customs tariffs because it took both producers and workers into account.

At the request of Mr. LEDDY (United States of America), the representative of Switzerland agreed to prepare a report on the system in force in Switzerland for circulation to the Committee.

In answer to a request for clarification by Mr. COREA (Ceylon) as to whether it was permissible for the United States to impose a tax on imported natural rubber in order to assist the production of synthetic rubber, Mr. LEDDY (United States of America) replied in the negative.

Mr. D'ASCOLI (Venezuela) thought that confusion would arise by stating that an internal tax would not be considered as such when collected at the customs. He suggested the following alternative text, which he felt would safeguard national production:

"Taxes and charges referred to in this Article which according to the administrative system of a Member country are collected together with custom duties, will be subject to all the requirements of this Article. Any Member which employs internal taxes and the other charges referred to in this Article as a part of its system of industrial protection, may notwithstanding raise its custom duties at the time of diminishing or eliminating the said taxes in a proportion equivalent to such reduction or elimination."

Mr. LEDDY (United States of America) stated that the provisions relating to internal taxes were not designed to limit the degree of protection, but merely to determine the form which that protection should take. Any country was free to replace internal taxes by import tariffs which were subject to the negotiations referred to in Article 17. There was no general binding or limitations on tariffs as such.

Mr. LLERAS (Colombia) stressed that existing taxes should continue until after elimination through negotiation; the aim of the Colombian amendment was to provide for a transition period for such elimination.

The CHAIRMAN, in reply to a question by Mr. ADARKAR (India), stated that Article 13 dealt not only with quantitative restrictions but also with other protective measures for the purpose of economic development, which came within the scope of Committee II.

Mr. NASH (New Zealand) explained that negotiations for the reduction of tariffs had been envisaged in the Charter in order to bring about freer trade. Discussions in Geneva had endeavoured to take all practices into account. The purpose of the Charter could not be defeated by allowing an internal charge on an imported product, whilst a like duty was not levied on the national product. It was appropriate for Committee III or any

/sub-committee

sub-committee to extend the provisions of the Article so as to provide for any legitimate practices brought up in the discussion.

Mr. SAHLIN (Sweden) explained the Swedish amendment suggesting substitution of the word "system" for "measures" in paragraph 4 (b). Referring to the variations which existed in Sweden in respect of the proportion of imports of certain foodstuffs in relation to the domestic production, it seemed clear that the provisions of paragraph 4 (b) should be interpreted as referring to the system as a whole and not to the percentage applied at a given date.

Mr. HOLLOWAY (Union of South Africa), referring to the Cuban amendments, stated that if the word "transportation" were deleted, the last sentence would have no meaning. On the other hand, if "transportation" were retained without the last sentence, ITO would be empowered to interfere in the internal administration of railways in the different countries. The intention was that countries should not be permitted to annul, by means of railway rates, the concessions granted under customs tariffs. Furthermore, his country felt that if both amendments were approved, there would be a gap inasmuch as a country could, by means of differential railway rates, take away concessions granted under the Charter.

He asked whether the Cuban delegation considered the amendments as one whole, or whether the first suggestion could be rejected, and the second accepted without detriment to the Article.

Mr. GUERRA (Cuba) replied that the two proposals should be considered as one.

Mr. PELLIZA (Argentina) explained that his amendment (item 65) added to paragraph 4 (a) products more essential than were cinematographic film, provided a more reasonable effective date, and extended the application of paragraph 4 also to paragraphs 1 and 2. Internal taxes used for economic and social purposes should not be eliminated. The amendment to paragraph 5 (item 73) merely served to avoid taking money from one pocket and putting it in another.

Mr. PUIG (Ecuador) asked for a more specific answer as to whether exemption from taxes granted to certain new industries would be forbidden under Article 18.

The CHAIRMAN replied that if it meant that a state enterprise was exempted from taxes on imported materials, the answer was no.

Mr. PUIG (Ecuador) then asked whether paragraph 2 would forbid preferential tariffs granted temporarily to domestic products in the case of congestion due to lack of rolling stock of state operated railroads.

/The CHAIRMAN

The CHAIRMAN replied that paragraph 2 did preclude differential transport rates in favour of a domestic product: it would be necessary to decide each case on its merits.

Mr. PUIG (Ecuador) agreed, but stated that such a system had been used in his country in preference to suspending imports. The sub-committee should study this problem as well as the necessity of "mixing" regulations in the case of domestic surpluses.

Mr. MELANDER (Norway) could not support amendments contrary to the principle of Article 18, and was in favour of those submitted by the delegations of the United States and Sweden; favourable consideration should be given to the statement of the representative of Switzerland. Internal taxes were sometimes the most adequate way to stabilize prices: the procedure as practiced in Norway, where taxation was used to lower the price sometimes of imported, sometimes of domestic products, was designed to equalize, not to discriminate. The Norwegian amendment (item 70) would allow for internal regulations used for other than protective purposes, e.g. in more or less state-controlled industries. Detailed explanation would be submitted to the sub-committee.

Mr. SAENZ (Mexico) agreed in principle with the statement of the representative of New Zealand, but paragraphs 1 and 2 could be accepted only, if the situation mentioned by the representatives of Ecuador and Peru, concerning protection of industry by tax exemption, was not precluded.

Internal regulations on mixing were important to industrial development to ensure a market for a national product. Paragraph 3 should be modified and co-ordinated with the provisions for Economic Development. Committee II should be represented in the sub-committee when that item was studied.

Mr. Saenz supported the Argentine amendment to paragraph 4.

Mr. GONZALEZ (Uruguay) noted that Annex A to Article 16 provided that in a preferential system preferential treatment through internal taxation may be replaced by a preference in customs duties and then be negotiable. The amendment of Colombia and Uruguay (item 54) would provide that existing internal taxation would be negotiable as set forth in Article 17.

Replying to a question by Mr. LLERAS (Colombia) concerning taxation of a state controlled monopoly, the CHAIRMAN stated the particular case would come under Article 30.

Mr. LLORENTE (Philippines) stated he would submit a memorandum concerning Article 18; the amendment submitted by Peru was of great interest to his delegation.

Mr. STUCKI (Switzerland) noted the difficulties in providing for all the detailed circumstances of internal taxation and wondered whether it would

/not be more

not be more practical to limit the provision to the general principle and to leave internal taxes to be negotiated together with customs tariffs.

Mr. CHAVEZ (Peru) stated that a revised text of his amendment in accordance with the discussions of Article 18 would be submitted to the sub-committee.

Mr. SUTENS (Belgium) supported the remarks of the representative of Switzerland. Commercial treaties usually contained clauses dealing with internal taxation; and the ITO would give consideration to special situations within the principles of the Charter.

The CHAIRMAN noted there was general agreement regarding the principle of Article 18, but differences as to degree and scope of its application. On the suggestion of Mr. LEDDY (United States of America) it was agreed to refer amendments to Articles 18 and 19 to the sub-committee on Articles 16 and 17 and to defer decision on possible changes in its composition, until the discussion of Articles 18 and 19 was concluded.

II. PROPOSED NEW ARTICLE 18A

Mr. COLOCOTRONIS (Greece) and Mr. LECUYER (France) supported the proposal by the delegation of Norway (item 76) for a new article concerning services.

Mr. MELANDER (Norway) stated that the purpose of this proposal was to prevent state discrimination in the field of shipping, finance, and insurance. It supplemented Article 18 and the principle underlying it was already contained in Article 50 which also dealt with services. Complaints arising from the proposed Article would be referred to the ITO or the Specialized Agencies if such were established. To counter possible objections against the proposal, based on the special problems of economic development, these problems could be taken care of in Article 15.

Mr. SETDENFADEN (Denmark) supported the Norwegian proposal.

Mr. ATARKAR (India) thought the proposal went beyond the scope of Chapter IV which dealt with goods, not services, and was inconsistent with the purposes of Article 18. It would make it impossible for countries to develop shipping, insurance or financial services. Protection by subsidies and tariffs was recognized by the Charter, but here tariffs were impracticable; if a country was not in a position to compete by means of subsidies, it could not develop shipping unless it was free to reserve part of its trade to its merchant navy. Articles 13 and 50 did not provide an adequate analogy.

Mr. SHACKLE (United Kingdom) felt that the subject of shipping was sufficiently related to warrant its inclusion in the Charter, although the general problem should be dealt with by the proper agency when it was established. If there was merit to Article 50, safeguard against

/discrimination

discrimination in shipping was equally justified. If it were included in Chapter IV, then, ipso facto, the provisions of Article 13 would apply.

Mr. SAHLIN (Sweden) and Mr. LAMSVELT (Netherlands) supported the Norwegian proposal.

Mr. D'ASCOLI (Venezuela) wondered whether acceptance of the proposal would relieve countries of the discriminatory practices of private enterprise. If so, it could be accepted, but he doubted that it would solve his country's situation.

Mr. PELLIZA (Argentina) agreed with the statement of the representative of India, and thought the problem should be dealt with by the International Maritime Conference to be held in February. The term "discrimination" should not be confused with "assisted development." Shipping clauses in Argentine commercial treaties did not discriminate against those who offered better services.

Mr. MORTON (Australia) agreed that the Chapter dealt with goods and not with services and suggested the International Maritime Conference should consider the problem.

Mr. NASH (New Zealand) while supporting the principle of non-discrimination, thought the Norwegian amendment would need re-drafting. There were many difficulties to overcome: it was usually not the government, but individuals who decided on who should undertake the financing, shipping and insurance. Often currency difficulties influenced this choice, as well as long established practice.

It was agreed to establish an ad-hoc sub-committee to study the Norwegian proposal, composed of: Argentina, France, Greece, India, Norway, Union of South Africa, United Kingdom, and Venezuela. This would meet on 17 December 1947 at 10.30 a.m.

The meeting rose at 7.30 p.m.
