

THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE THIRTY-THIRD MEETING

Held at the Capitol, Havana, Cuba,
Friday, 6 February 1948 at 10.30 a.m.

Chairman: Mr. LLERAS RESTREPO (Colombia)

1. REPORT OF SUB-COMMITTEE D - ARTICLE 43, PARAGRAPHS 1 (b) and 2
(E/CONF.2/C.3/37 and Corr.1)

ARTICLE 43

Paragraph 1 (b)

Mr. PELLIZA (Argentina) stated that he would not press his reservation but wished it recorded that in his opinion the proviso to paragraph 1 (b) (i) was unnecessary.

It was agreed to request the Central Drafting Committee to examine sub-paragraphs (ii) and (iii) of paragraph 1 (b) with a view to removing any ambiguity and vagueness concerning the words "the war" as referring to World War II.

Mr. PELLIZA (Argentina) maintained his reservation to sub-paragraph (iii). The Argentine proposal to delete the proviso to sub-paragraph (iii) on the ground that state commercial policies should not be subject to consultation and prior approval by all who considered themselves affected had not been accepted. Nor had the Sub-Committee accepted his suggestion to replace the proviso by "provided that on the request of another Member directly affected, the Member should consider the possibility of reviewing or suspending the measure giving rise to the request."

There being no support for the Argentine proposal, paragraph 1 (b) as submitted by the Sub-Committee, was approved.

Paragraph 2

Mr. PELLIZA (Argentina) maintained his reservation. The amendment which had been submitted was in conformity with the opinion of the delegation of Argentina that the powers and functions of the Organization should be limited to those laid down in Article 69.

/Mr. MULLER (Belgium)

Mr. MULLER (Belgium) asked that the date 1 January 1951 be maintained. There should be a definite date to review existing exceptions in order to avoid any possibility of their becoming permanent; the Organization was empowered to postpone the time limit if necessary. He had suggested that in order to take account of possible crises in the future, the Organization should be authorized to permit such measures also after the date fixed. This would have the advantage that a country might be more inclined to give up exceptions which it did not at present need.

Mr. SHACKLE (United Kingdom), referring to paragraph 29 of the report of the Sub-Committee (E/CONF.2/C.3/37), said that should there be a future crisis, it would be for the ITO to exercise its judgment at that time. He was supported by the representatives of Norway and Czechoslovakia.

There being no support for the Belgian proposal, paragraph 2 was approved, note being taken of the Argentine reservation.

The CHAIRMAN stated that the amendment presented by the delegations of Guatemala and Uruguay would be considered at the next meeting, and noted that the amendment had also been signed by the delegations of Argentina and Ecuador.

2. REPORT OF SUB-COMMITTEE J - ARTICLES 30 AND 31 (E/CONF.2/C.3/43)

Mr. NASH (New Zealand), as its Chairman, submitted for consideration the Report of Sub-Committee J.

ARTICLE 30

Paragraph 1 (a)

Mr. ILORENTE (Philippines) considered that all of the Philippine state trading enterprises were within the scope of Section D. However, assurance was requested that the activities of the Philippine National Trading Corporation were permissible in this Section; the Corporation, a government agency, dealt for the most part in primary commodities, particularly in materials for reconstruction, and only in some instances sold them at slightly above cost. It was not a monopoly nor did it discriminate against Member states.

Mr. CAPLAN (United Kingdom) replied that Section D was based on the clear recognition of the principle that a country should not, because it was operating state enterprises, have any special advantages or disadvantages in the conduct of its foreign trade. From what had been stated about the Philippine state enterprises, Mr. Caplan thought the activities were not in conflict with Section D.

/Mr. EVANS (United States of America)

Mr. EVANS (United States of America) agreed with the representative of the United Kingdom and added that Article 30 dealt only with discriminations as between Members and not with discrimination in favour of nationals.

The representatives of Belgium and France asked that the Central Drafting Committee give attention to the discrepancies in the English and French texts and declared that their approval of any provision would only refer to the English version.

Mr. ADARKAR (India) said that although Article 30 dealt with non-discrimination as between States, it should not be inferred that a State enterprise was free to give protection to domestic enterprises. Articles 30 and 31 allowed protective measures by means of a price differential but not by means of quantitative restrictions. That method would conflict with Article 20, paragraph 3, but a state enterprise had the same rights as private enterprises in the use of quantitative restrictions permitted elsewhere in the Charter.

Paragraph 1 (a) - approved.

Paragraph 1 (b)

Mr. NASH (New Zealand) replied in the affirmative to the question of Mr. HAIDER (Iraq) as to whether the phrase "in accordance with customary business practices" included the reliability of a supplier or buyer.

Interpretative Note to Paragraphs 1 (a) and (b)

Mr. LORENTE (Philippines), after pointing out minor drafting changes, stressed that the original footnote did not include any mention of monopoly.

Mr. NASH (New Zealand) replied that the Sub-Committee was of the opinion that it was proper to exclude from State trading the enterprises mentioned in sub-paragraphs (a) and (b) if they were under government control. If a monopoly was created, it was in effect government controlled and, therefore, should also be excluded.

Mr. PELLIZA (Argentina) suggested certain exceptions to the principles in Article 30:

1. Purchases or sales made through State enterprises putting into effect inter-governmental barter arrangements which it was difficult to carry out through private enterprise;
2. Imports by State enterprises of scarce products on a non-profit basis; and;
3. Trade in goods for distribution at low costs for social welfare purposes.

The CHAIRMAN ruled that the proposal should be submitted in writing.

/Mr. CORIAT (Venezuela)

Mr. CORIAT (Venezuela) thought that provision was already made in Article 30 for some of the suggestions of the representative of Argentina but suggested that a Working Party should be established to consider the proposal.

Mr. CAPLAN (United Kingdom) thought the Argentine proposal would undermine the whole of Section D. The United Kingdom was probably the largest state trader represented at the Conference, but supported Section D because it was fair, just and equitable.

Mr. EVANS (United States of America) said that Section D was intended to bring about a situation under which any privilege or obligation laid down in the Charter should not be increased or reduced because a Member was engaged in State trading. The fundamental purpose of Section D was to obtain a neutral balance so as not to force a country either to relinquish or take up State trading.

The second suggestion of the representative of Argentina was covered by the general exceptions in Chapter IV regarding scarce commodities and emergency situations. As to the third suggestion, there was nothing in Article 30 to prevent a country from distributing products at low cost. However, the first suggestion, concerning the implementation of inter-governmental agreements, was a matter of substance and unless there was substantial support for a radical departure from the principle of obtaining a neutral State Trading Section, there was no necessity to form a Working Party.

After some discussion, it was agreed to postpone further consideration of the Argentine amendment and of the formation of a working party to which it might possibly be referred, until the representative of Argentina had submitted his proposal in writing to the Sixth Committee.

The Notes to sub-paragraph 1 (a) and (b) of Article 30 were approved. Paragraph 1 (c), the Interpretative Note to Paragraph 1, and Paragraph 2 Approved without comment.

Mr. BRIGNOLI (Argentina) reserved his position regarding the whole of Section D pending decision on his amendment.

Mr. GUTIERREZ (Bolivia) associated himself with this reservation with respect to Section D.

New Article 30 A, Article 31, Paragraphs 1, 3, 4, Interpretative Note to Paragraph 4, and Paragraph 5

Approved without comment.

/Paragraph 2 of Article 31

Paragraph 2 of Article 31

Mr. BAYER (Czechoslovakia), supported by Mr. NASH (New Zealand) and Mr. CARLAN (United Kingdom), proposed that the words "in respect of the proposed arrangement" at the end of paragraph 2 (b) of Article 31 should be deleted as being redundant.

It was agreed that these words should be deleted.

Paragraph 6 of Article 31

Mr. NASH (New Zealand) as Chairman of the Sub-Committee drew attention to the Mexican note in the Specific Comments concerning "social purposes" mentioned in paragraph 6. Mexico had withdrawn her proposal on the understanding that the Note would be embodied in the Sub-Committee's Report.

Mr. CHIRIBOGA (Ecuador) maintained his reservation in respect to all provisions relating to state monopolies for fiscal purposes.

Paragraph 6 was approved.

Paragraph 7 of Article 31

Mr. NASH (New Zealand) explained that the New Zealand delegation had moved an amendment to Article 33 of the London Draft. When that Article was dropped the second part of the note together with the New Zealand reservation, was transferred to Article 31, as a footnote. With a slight modification of the text it appeared in the General Trade Agreement as an Interpretative Note to Article 12. New Zealand's reservations with respect to Article 31 was maintained, pending discussion of Article 21 to which the footnote was related.

Mr. BLUSZTEIN (Poland) associated himself with the reservation of the New Zealand delegation.

New Article 31A

Mr. NASH (New Zealand) explained that Article 31A would ensure that if any government which had accumulated stocks of primary products for national security or any non-commercial purposes, should before liquidating them give four months public notice or inform the ITO which would be responsible for advising Members concerning the proposed government action.

Mr. LLORENTE (Philippines) after suggesting several changes in punctuations, stated that there was an apparent inconsistency between Article 43 (II)(c) of the Geneva text, and Article 31A. The former Article provided for liquidation of temporary surpluses, presumably stock piles accumulated as a consequence of war. Article 31A dealt with primary commodities and specified four month prior notice which might give rise to harmful market speculation.

Mr. EVANS (United States of America) pointed out that Article 31A was devised because some Members were afraid that the large emergency stock pile programme of the United States of America authorized by the law of that

/country might

country might cause serious injuries to their commercial interests. The representative of the Philippines had read more into the Article than was intended. The stocks would have to be held by a government or government agency, and would have to have been accumulated for non-commercial purposes. Therefore, the provision would not apply to commercial stocks of state trading enterprises. There might be different kinds of non-commercial stocks to which the provision might apply. The United States was willing to undertake the obligation entailed in the four-month notification clause which would avoid dumping on the market with its consequent havoc with world prices.

Mr. CAPLAN (United Kingdom) pointed out that it was not easy for a country to accept an obligation in relation to its own domestic plans, which it had never had to accept in the past. Any liquidation of a substantial amount of a primary commodity was bound to cause some injury. The Article was not ideal, but it would certainly prevent great injury to producing and consuming countries. He could see the point of the representative of the Philippines regarding the prior notification, but it was far better to give public notice than to plunge countries into ruin by liquidating large stocks without notice. The country most likely to be affected already had legislation providing for advance notice of the liquidation of its stocks.

He supported the draft of the new article.

Mr. CHIRIBOGA (Ecuador) suggested that the intention of liquidation of stocks should be subject to public notice as well as to notice to the Organization. This would be accomplished by changing the word "or" to "and" in sub-paragraph (a).

Mr. BAYER (Czechoslovakia) considered Article 31A a well balanced article. The fact that Article 31A did not ask for exemption from the other provisions of Section D was recognized and incorporated in the Note in the Sub-Committee's Report under item 33.

Mr. BRIGNOLI (Argentina) said that the provisions of this Article would be applicable exclusively to state enterprises, and state enterprises would, therefore, have greater obligations than private enterprises.

Mr. GUTIERREZ (Bolivia) held that the provisions would not be sufficient to cover such products as raw materials as laid down in Chapter VI, but the Article filled a serious gap in the Charter. He supported the proposal by Ecuador that "or" should be changed to "and".

Mr. CAPLAN (United Kingdom) believed that all interested countries would be bound to see the notice in the official government organs. The Ecuador amendment was not necessary.

/Mr. NASH (New Zealand)

Mr. NASH (New Zealand) pointed out that there might be an occasion where the Member government owning the stocks might decide to notify the Organization rather than give public notice. In this way the difficulties envisaged by the representative of the Philippines might be avoided, but it could not be done if both notifications were obligatory.

Mr. ADARKAR (India) endorsed the remarks by the representative of New Zealand. He preferred the retention of the word "or".

Mr. COUHY TERRA (Uruguay) supported the Ecuador proposal as another safeguard for the smaller countries against injury. Did "non-commercial" mean stocks established in a country for war purposes, or did it also include stocks established for social needs?

Mr. HAIDER (Iraq) made a compromise proposal that (a) should be optional and (b) obligatory.

The meeting rose at 1.15 p.m.
