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THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held at the Capitol, Havana, Cuba
Tuesday, 17 February 1948 at 4.00 p.m.

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

CONSIDERATION OF THE REPORT OF SUB-COMMITTEE F ON ARTICLE 21 (Document E/CONF.2/C.57).

Mr. MELANDER (Norway), Chairman of Sub-Committee F, in presenting the Report of the Sub-Committee, called attention to one important change which had been made in the Article, the addition of a new paragraph 1 as a preamble to the Article. The other changes made by the Sub-Committee were minor ones and, in substance, the Geneva text had been maintained.

Mr. BRIGNOLI (Argentina) stated that although his delegation would have wanted more elasticity in paragraph 3 (a) (i) it had withdrawn its amendment to that paragraph.

Referring to the amendments to paragraph 4 (a) and 5 of Article 21, which were proposed by the delegation of Argentina but not accepted by the Sub-Committee, he said that his delegation maintained its reservation regarding Article 21 with respect to these paragraph.

Dr. CHARLONE (Uruguay) reserved his country's position on Article 21 pending the establishment of the definitive text of Article 24. He based his reservation on the fact that his country was a member of the International Monetary Fund and as such did not feel inclined to accept provisions which might limit the rights reserved to members by the Articles of Agreement of the International Monetary Fund as regards import regulations applied by means of exchange controls.

If, when Article 24 was considered, it was decided that the Organization should accept the determinations of the International Monetary Fund in exchange matters, the delegation of Uruguay would withdraw its general reservation regarding Article 21.

Dr. Charlone added that he was obliged to make a specific reservation regarding the last part of paragraph 3 (a), which deals with Members' needs

/for monetary

for monetary reserves.

In this connection he recalled that according to the paragraph referred to, in assessing any Member's need for monetary reserves, due regard would be paid "to any special factors which might be affecting the Member's reserves or need for reserves."

In the London draft of the Charter various examples of the factors which were to be taken into account were set forth. As none of these covered the economies of those countries which, like Uruguay, obtained their foreign exchange from a few lines of exports the value of which was subject to periodical fluctuations, he thought that it should be put on record that the term "special factors" was applicable to a case of this kind.

Dr. Charlone pointed out that the International Monetary Fund would not supply countries in Uruguay's position with sufficient resources to enable them to avoid deflationary policies during periodical slumps caused by fluctuations in the value of exports. The availability of monetary reserves sufficient to meet difficulties of this kind was an essential part of Uruguay's economic policy.

In conclusion, Dr. Charlone said that he would withdraw his reservation if it was noted in the minutes of the meeting that the term "special factors" satisfactorily covered the case he had brought forward.

Mr. MULLER (Chile) stated that in the Working Party which had been formed to discuss the Chilean amendment to Article 20, the United Kingdom and the United States of America had said that they would accept certain changes in Article 21 on the condition that the Chilean amendment to Article 20 was withdrawn. Although agreeing in principle, Chile did not want to withdraw until a decision had been taken upon the final draft of Article 13 owing to its close relation to Article 20. The delegation of Chile therefore reserved its position concerning Article 21.

The representatives of the United States of America and the United Kingdom concurred with the statement by the representative of Chile.

The Committee decided to proceed on the basis of the text submitted by the Sub-Committee on the understanding that the question of a further amendment to Article 21 could be re-opened at a later stage by the Members of the Working Party to which the representative of Chile referred.

Article 21

Paragraphs 1 and 2

Approved without comment.

Paragraph 3 (a)

Mr. CORIAT (Venezuela) supported by Mr. POLIT (Mexico) and

/Mr. BRIGNOLI

Mr. BRIGNOLI (Argentina) said that as a "threat" indicated a certain danger, and no one could be asked to wait until that danger was "imminent" before acting, he proposed the deletion of "imminent" from paragraph 3 (a) (i).

Dr. CHARLONE (Uruguay) and Mr. BRIGNOLI (Argentina) supported the Venezuelan amendment.

The representative of URUGUAY also stated that it was inappropriate for a country not to be able to apply quantitative restrictions until its monetary reserves were very low. "Very" might be deleted.

In reply to a question by Mr. HAIDER (Iraq) the representative of the UNITED STATES OF AMERICA stated that he assumed that the definition of monetary reserves would conform to that in the Articles of Agreement of the International Monetary Fund which was in terms of convertible currency. In reply to Mr. CORIAT (Venezuela) he pointed out that the word "imminent" was essential to prevent the intent of the Article from being frustrated. Otherwise there would be a danger that a remote "threat" might lead to immediate restrictive action with damaging results.

Mr. HASNIE (Pakistan) said that he interpreted "imminent" to mean obvious and not necessarily immediate. "Positive" could well be substituted for "imminent" in order to meet a case in which a country might be faced with a threat to its monetary reserves in two or three years time owing to long delivery dates for certain classes of capital goods.

Mr. THOMPSON-McCAUSLAND (United Kingdom) said that the "special factors" clause in sub-paragraph 3 (a) was intended to supply the flexibility in the interpretation of sub-paragraphs 3 (a) (i) and (ii) which the delegate for Uruguay had asked for in his first statement.

In reply to a remark by the representative of Cuba, the representative of Venezuela stated that the term "imminent threat" qualified "decline" and "imminent" did not merely qualify "threat" as suggested.

It was agreed that the word "imminent" should be retained.

Mr. PHILLIPS (Australia) pointed out in answer to questions by the representatives of IRAQ and AFGHANISTAN that the seriousness of a decline in reserves depended on a number of factors, such as the size of the country, its need for reserves, the variability of its trade, and the size of the reserves. Neither the absolute amount of the decline nor the proportionate amount would be valid in all cases as a criterion of the seriousness of the decline.

Paragraph 3 (a) was approved.

Paragraph 3 (b)

Mr. GOMEZ-ROBLES (Guatemala) believed that the second part of

/paragraph 3 (b)

paragraph 3 (b) was redundant and proposed its deletion.

The representatives of NORWAY and AUSTRALIA supported by the representative of CHILE, pointed out that the paragraph "this provision shall not be interpreted..... under sub-paragraph (a)" had been inserted at the suggestion of the representative of Australia solely in order to make clear beyond doubt, the intent of the provision.

Paragraph 3 (b) was approved.

Paragraph 3 (c)

Mr. GOMEZ-ROBLES (Guatemala) asked whether there was not a contradiction in referring to "regular" channels of trade in connection with "minimum" commercial quantities.

Mr. MELANDER (Norway) replied that minimum as well as maximum quantities of goods could pass through regular channels of trade. The import of minimum quantities was designed to keep open those regular channels.

Paragraph 3 (c) was approved.

Paragraph 4 (a) was approved without comment.

Paragraph 4 (b).

Mr. CORIAT (Venezuela) proposed that the Geneva text should be retained. The text recommended by the Sub-Committee linked this sub-paragraph with sub-paragraph 3 (a) and thus restricted the scope of the Geneva text.

Mr. MELANDER (Norway) replied that sub-paragraph 4 (b) was subject to sub-paragraph 3 (a) although the Geneva text had made no specific reference to the latter sub-paragraph. The text recommended by the Sub-Committee was designed to recognize the fact that a country might as a result of its domestic policies not only experience a high level of demand for imports but also a high domestic demand from products which it normally exported and that its reserves of foreign exchange might be depleted for either of these reasons.

Mr. PHILLIPS (Australia) agreed that the Geneva text did not give more power to impose restrictions, and added that the criteria in sub-paragraph 3 (a) included the forestalling of a decline in reserves as well as very low reserves.

Mr. GOMEZ-ROBLES (Guatemala) thought that the text of sub-paragraph 4 (b) proposed by the Sub-Committee represented an improvement both in clarity and flexibility over the Geneva text and was a defense for under-developed countries. A country might use a part of its monetary reserves to fulfil the aims of Articles 3 and 9 and then if faced by a serious decline in those reserves, could impose restrictions and give preference to essential imports.

/Paragraph 4 (b)

Paragraph 4 (b) was approved.

Paragraph 4 (c) approved without comment.

Paragraph 5 (a) approved without comment.

Paragraph 5 (b)

Mr. GOMEZ-ROBLES (Guatemala) suggested inclusion of the phrase "or unnecessarily prolonging" after the phrase "substantially intensifying".

Mr. BRONZ (United States) agreed there should not be undue prolongation of restrictions but felt that the first sentence of sub-paragraph (b) covered the point.

Mr. GOMEZ-ROBLES (Guatemala) accepted this explanation. He then asked whether the phrase "any other Member" should not be changed to some such phrase as "affected Members".

Mr. BRONZ (United States) replied that the imposition of a restriction by a country might affect every other Member. It would be more practical to allow the Organization to decide this question at its discretion.

Mr. PHILLIPS (Australia) agreed, and added that in Geneva the Sub-Committee discussing the subject also felt that a Member might be invited to participate in the discussion if there was a presumption that its action might be contributing to the difficulties of the Member concerned.

Paragraph 5 (b) was approved.

Paragraph 5 (c) (d) and (e) approved without comment.

Paragraph 6 approved without comment.

Interpretative Note to Article 21

Mr. MADJID (Afghanistan) asked whether the omission in the footnote of reference to a threat to balance of payments had substantive meaning, and whether all countries were equally covered as long as their domestic policies resulted in a high level of imports, and as long as an excessive monetary reserve was not accumulated.

Mr. NASH (New Zealand) replied that Article 21 of the Draft Charter and this proposed new foot-note were the same as the GATT Article XII and its foot-note. The note was appended to Article 31 of the Geneva Draft as a matter of convenience since the necessity for it arose from an amendment to Article 33 of the New York Draft which was submitted by the New Zealand delegation at Geneva and subsequently, subject to reservation, was withheld when the note in question was approved. Article 33 of the New York Draft was omitted from the text in the Geneva Draft. The note was general: any country which as a result of its domestic policies experienced such a high level of imports that it was brought into balance of payment difficulties had access to Article 21 and could not be challenged as to those domestic policies.

/The Interpretative

The Interpretative Note to Article 21 was approved.

Dr. CHARLONE (Uruguay) stated that in view of the statement of the representative of the United Kingdom regarding special factors as they related to a judgment of adequate monetary reserves, his delegation withdrew its reservation on sub-paragraph 3 (a) which was made earlier at the meeting.

The CHAIRMAN stated that Article 21 had been approved in second reading, subject to the reservations as recorded. Both the Chairman and the Members of Sub-Committee F were to be congratulated for their excellent work on Article 21.

The meeting rose at 5:50 p.m.
