

THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE FORTIETH MEETING

Held at Havana, Thursday, 19 February 1948, at 4.00 p.m.

Chairman: Mr. L. Dana WILGESS (Canada)

1. CONSIDERATION OF THE REPORT OF SUB-COMMITTEE A ON ARTICLES 18 AND 19  
(E/CONF.2/C.3/59)

Mr. IANVELT (Netherlands), as Chairman of Sub-Committee A, stated that the text of Article 18 had been recast because the Geneva text, in itself the result of many compromises, was somewhat cryptic and obscure. The text recommended by the Sub-Committee differed considerably in form from the original, but there was only one important change in substance. In the Geneva text discriminatory internal taxes which afforded protection to directly competitive or substitutable products in cases in which there was no substantial domestic production of the like product could be maintained subject to negotiations, but the Sub-Committee recommended their outright elimination as a sounder principle. Members would, of course, be free to convert the protective element of such taxes into customs duties. With this improvement in drafting and substance, the text of Article 18 was recommended to Committee III for adoption.

ARTICLE 18

Paragraph 1

Mr. GOMEZ-ROBLES (Guatemala) stated that his delegation reserved its position on Article 18 pending the final text of Articles 13 and 15, since the possibility of under-developed countries protecting their industries by any means other than tariffs had now been removed from all other Articles.

Mr. STUCKI (Switzerland) reserved provisionally his position regarding Article 18 until his Government had decided whether the new text of Article 18 would permit the continuation of the present Swiss system of agriculture and industry.

Paragraph 1 was approved.

Interpretative Note to Article 18: approved without comment.

/Interpretative

Interpretative Note to paragraph 1

Mr. GOMEZ-ROBLES (Guatemala) asked for an explanation of which internal taxes might be technically inconsistent with the letter but not inconsistent with the spirit of Article 18.

Mr. LLERAS (Colombia) replied that the first part of the interpretative note had been drafted to cover certain problems of Colombia connected with domestic products, subject to prices fixed by various local monopolies, which could not be taxed in exactly the same manner as the like imported products, which were subject to a consumption tax, without grave political and administrative consequences.

Interpretative Note to paragraph 1 was approved.

Paragraph 2 was approved, subject to the reservations of Cuba, maintained provisionally, and of Brazil and Chile maintained provisionally on paragraphs 1, 2 and 3.

Interpretative Note to paragraph 2

Mr. HAKIM (Lebanon) asked whether the following products could be considered to be directly competitive or substitutable: coal vs. fuel oil; tramways vs. busses. If they were not, the interpretative note was acceptable to his delegation.

Mr. BURGESS (United Kingdom) stated that it was impossible to lay down in advance any exact interpretation of the term "directly competitive or substitutable". The interpretative note narrowed the scope of paragraph 2, but the Organization would have to interpret it more precisely when actual cases were put before it. A Member could only allege a breach of the second sentence of paragraph 2, i.e., that the tax was designed to protect the domestic product, when the latter was directly competitive or substitutable. In his opinion, however, the two examples were not directly competitive or substitutable products although the purposes for which they were used were similar.

Mr. GUERRA (Cuba) stated that it was because of the difficulty attached to a general definition that the Sub-Committee had removed from the text of the Article, and placed in the interpretative note, the references to "directly competitive or substitutable products" so that each case could be dealt with as it arose.

Mr. LEDDY (United States) was of the opinion that a decision could not be made as to whether any two products were directly competitive or substitutable except in relation to a factual situation. It might be held that a tax on coal was in a particular case designed to protect the fuel oil industry, but that would have to be determined in relation to the

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particular case.

Mr. HAKIM (Lebanon) replied that he had only wished to ensure that the Organization, in making its interpretation, could not determine a government's taxation policy.

Interpretative Note to Paragraph 2 was approved.

Paragraph 3

At the request of the representative of Belgium, the CHAIRMAN stated that the Central Drafting Committee would be requested to correct the English text of paragraph 3 to conform to the French text.

Mr. SCARPATI (Argentina) said that the new draft of Article 18, particularly paragraph 3 was not entirely satisfactory to his delegation, even though it was not in disagreement with the principles established in the Article. He believed a Member should be permitted to continue existing internal differential taxes when for technical reasons it was difficult to transfer the differential to customs tariff, subject to negotiations under Article 17.

Mr. ALMEIDA (Brazil) supported the statement of the representative of Argentina. In some countries where internal taxes had been in existence for many years, difficulties would arise in transforming them into customs tariffs, on products which had not been negotiated as well as on bound items. The position of Brazil in this respect had been defined at the London Conference when it had recorded a reservation. Time would be required in which to make such adjustments. He suggested that a working party be established to consider the Argentine suggestion.

Mr. ILOMUISI (Philippines) in supporting the proposal of the representative of Brazil for a working party, stressed that the Philippines should be afforded ample time to transform an existing internal tax, presumably into a customs tariff. An abrupt change would be impractical.

Mr. BARNES (United Kingdom) pointed out that if the import duty on the product in question was not bound, the margin of protection afforded by internal taxation could be transferred to the customs duty; even if it were bound, under paragraph 3 of Article 18 it was possible to postpone the transfer until such time as it was possible for the Member to obtain a release from its trade agreement obligations.

Mr. MULLER (Chile) supported the Brazilian proposal for a Working Party, especially in connection with the change made in the second sentence of former paragraph 1 of Article 18.

Mr. LADDY (United States) stated that Sub-Committee A had fully considered the problem raised by the delegates of Argentina and Brazil.

/Brazil had

Brazil had participated in tariff negotiations at Geneva which were conducted on the understanding that existing discriminatory internal taxes would be eliminated. It was the view of the Sub-Committee that countries were free to increase tariffs to offset the elimination of such taxes. Where this was not possible because of duties bound in bilateral agreements, special provision was made in paragraph 3. Therefore, except in regard to items covered in the General Agreement, all countries were free to maintain the necessary level of protection. He did not regard as warranted the establishing of a Working Party.

Regarding the statement of the representative of Chile, it was because of the exception in paragraph 3, regarding bound items, that the Sub-Committee felt it possible to eliminate the provision for the continuation of certain internal taxes, subject to negotiation.

Mr. IAMSVELT (Netherlands) supported the remarks of the representative of the United States. This subject had been studied for two years and Sub-Committee A had given full and fair consideration to it; therefore there was no reason for a new Working Party.

Mr. CHIRIBOGA (Ecuador) supported the proposal for a Working Party.

Mr. ALMEIDA (Brazil) said that it was necessary to distinguish between two points: first, the question of internal taxes in the Geneva negotiations, which, while he did not accept the United States interpretation, he did not believe it was proper to discuss in Committee III; second, the Argentinian representative's suggestion that Members should be permitted to retain internal taxes, where there was no prior commitment. Although the representative of the United States was correct in saying that a Member would be free to increase tariffs to compensate for the elimination of the differential in existing internal taxes, it was necessary to point out the difficulties that might arise in such a transfer for legal, technical and historical reasons. Time should be allowed for a transitional period.

Mr. IAMSVELT (Netherlands) supported by Mr. FORTHOUME (Belgium) pointed out that the year or more which would elapse before the Charter would come into effect provided time for such a transfer.

Mr. ADARKAR (India) supported the proposal for a Working Party, not because of a particular interest in the subject, but because he believed the possibility of finding a solution for the difficulties of any country should be thoroughly explored.

Mr. BURGESS (United Kingdom) supported the statements of the representatives of the Netherlands and the United States.

Mr. ALMEIDA (Brazil) doubted that the time which would elapse before the Charter came into effect, referred to by the representative of the

/Netherlands

Netherlands, was an adequate solution. A country might not be willing to introduce the necessary legislation as a consequence of accepting the Charter before knowing that the Charter would come into force.

The CHAIRMAN suggested that paragraph 3 and the matter of setting up a Working Party, as proposed by the representative of Brazil, should be left for the time being.

Paragraph 4

Mr. GOMEZ-ROBLES (Guatemala) suggested the words "or class" should be inserted after the word "nationality" in the last line of the paragraph, to cover the practices of some transportation companies which applied differential charges for various classes of the same product, without taking into account distance, weight and volume, or of other companies which applied differential transportation charges based on quality to products having the same weight and volume.

Mr. FORTHOUME (Belgium), supported by the representative of the Netherlands, said that differential charges applied to various categories of the same product could be based on such a consideration as the most economic operation of the means of transport. Therefore, he could not support this proposed amendment.

Mr. HAIDER (Iraq) said that this paragraph was designed to prevent discrimination as between domestic and imported products, and that he could accept no wider interpretation of the paragraph than that.

Mr. BAYER (Czechoslovakia) believed ambiguity would result from the insertion of the words "or class" as proposed by the representative of Guatemala.

The Sub-Committee text of paragraph 4 was approved without amendment.

Paragraph 5

The delegation of Chile withdrew its reservation on paragraph 5.

Mr. GOMEZ-ROBLES (Guatemala) pointed out that a State might be obliged to use internal quantitative regulations for the purpose of encouraging substitutions, not necessarily for protection, but because of shortages of critical raw materials and products. Paragraph 5 allowed for no such exceptions. Paragraph 7 had the same shortcomings.

Mr. BURGESS (United Kingdom) pointed out that the paragraph 5 referred to internal regulations requiring that specific amounts or proportions of a product be supplied from domestic sources, and dealt essentially with regulations for protective purposes. Regulations imposed in respect of shortages of raw materials usually did not have protective effects, but in the event they did, they would be covered by Article 43.

/In response

In response to a request by Mr. USMANI (Pakistan), the CHAIRMAN said that the Central Drafting Committee would be asked to see that the meaning of paragraph 5 was clearly expressed. The representative of Pakistan had suggested that paragraph 5 might be clarified by amending it to read "...any specified amount or proportion of any component of any mixture...."

Mr. GUERRA (Cuba) said that Cuba's problems regarding shortages were the same as those of Guatemala. Cuba had proposed an amendment to Article 18 which related to the date fixed in the Geneva text for the maintenance of existing regulations in order to cover the possibility of the maintenance or establishment of internal quantitative regulations applied because of the shortage of certain products. Article 43 would not cover this problem because it related only to a transitional period. However, under the present text, provided the regulation did not require that the product to be mixed had to be of domestic origin, or provided that the regulation was not imposed for protective purposes, then such a regulation would not contravene the Article.

Mr. GUTIERREZ (Bolivia) pointed out that a government might find itself forced not only to impose restrictions on the use of a particular commodity in short supply, but also to regulate the production and use of a second basic commodity which was a possible substitute for the first. Both Guatemala and Bolivia had been faced by this problem. But he did not believe this would be prohibited by the provisions of paragraph 5, and felt that the explanation offered should be satisfactory to Guatemala.

Mr. GOMEZ-ROBLES (Guatemala) said he was not only speaking of mixtures nor of affording protection to domestic as opposed to imported products. When the text said "processing or use of products...." he interpreted it to mean that if the use of certain domestic products was regulated along with that of other domestic products, even in periods of shortages, it would be an infringement of the provisions of Article 18. The Guatemalan delegation would have to reserve its position concerning paragraph 5 unless it were made clearer.

Mr. LEDDY (United States) explained that requiring flour mills, for instance, to use twenty-five percent wheat of domestic origin would be considered an internal quantitative regulation relating to "use" under paragraph 5. The paragraph was also intended to relate to mixing regulations, such as the mixture of alcohol and gasoline in the manufacture of motor fuel. He agreed with Cuba that paragraph 5 would not preclude regulations designed to eke out supplies of short materials or to enforce objective standards. The paragraph was designed to prevent protection of domestic products against foreign competition by means of internal quantitative regulations.

/Mr. BURGESS

Mr. BURGESS (United Kingdom) believed the word "use" to be necessary, contrary to the suggestion of the delegate of Pakistan. If a Member required that fifty percent of the timber used in building should come from domestic sources, the regulation was not related to the mixture nor to the processing of the timber, but to its use.

Mr. STUCKI (Switzerland) cited an instance in Switzerland where of necessity during the war coal of a poor quality had been mined at great cost so far as transportation was concerned. Certain guarantees were given by the State to protect the investors. A temporary substitute for gasoline had also been manufactured during the war, and similar guarantees had to be given. Paragraph 5, he believed, would not permit a regulation to insure that a certain percentage of a domestic product should continue to be used until the capital investor had received just return. What was the Committee's view?

Mr. MacLIAM (Ireland) asked whether it could be assumed that where it was agreed that the bona fide purpose of a measure was not to protect domestic production, that measure would not be precluded by the article even though it might have the incidental effect of affording such protection? An aggrieved Member could, of course, challenge any statement made by another Member to this effect.

Mr. BURGESS (United Kingdom) referred to the first paragraph on page 11 of the Sub-Committee's Report, which he believed would answer the question raised by Mr. MacLiam (Ireland).

Mr. GUEPRA (Cuba) referred the representative of Ireland to paragraph 1 of Article 18, and expressed the view that the regulations mentioned by the representative of Switzerland would not be precluded by the Article if the domestic production was substantial, as mentioned in the first sentence of the Interpretative Note to paragraph 5, unless it was specified that a certain amount or proportion must be supplied from domestic sources.

Mr. ALMEIDA (Brazil) believed Article 43 (1) (b) (iii) covered the point raised by the representative of Switzerland. He inquired whether it was the Committee's interpretation that the exceptions in cases of general or local shortages provided for in Article 43 (1) (b) (i) would cover cases of anticipated short supply.

Mr. LEDDY (United States) was of the opinion that under paragraph 5 a Member could not establish a mixing regulation which protected a domestic product as against an imported product during periods when there was no shortage in order that the industry in question would be in existence in the event of a future shortage. He pointed out that although new regulations were prohibited under paragraph 5, existing ones could be maintained under

/paragraph 6

paragraph 6.

Mr. MacLIAM (Ireland) agreed that the position had now been made more clear.

Mr. GOMEZ-ROBLES withdrew his reservation to paragraph 5 on the understanding that the various interpretations and explanations offered would appear in the summary record.

Paragraph 5 was approved.

Interpretative Note to paragraph 5 - Approved

Paragraph 6

Mr. MAHADEVA (Ceylon) said he had consistently opposed paragraph 6, on the grounds that there was no difference in principle between the internal quantitative regulations coming under paragraph 5 of Article 18 and the quantitative regulations coming under Article 20. He could not see why the same procedure should not apply to both. The effect of the deletion of paragraph 6 proposed by his delegation would be to bring internal quantitative regulations as well as quantitative restrictions under Article 14.

Mr. LEDDY (United States) said although internal quantitative regulations and import quotas were similar, there was a distinction between them. The former were more flexible in that they only limited the percentage of total consumption imported - if consumption increased, imports would increase; whereas import quotas were more rigid, and limited total imports. Although complete elimination of internal quantitative regulations had been proposed by his delegation, this had proved to be impracticable. However, the number of existing internal quantitative regulations was relatively small and the exception in paragraph 6 was not to be compared with exceptions in the case of import restrictions.

Mr. MAHADEVA (Ceylon) did not agree that internal quantitative regulations were more flexible than quantitative restrictions, and maintained his delegation's reservation on paragraph 6.

Mr. USMANI (Pakistan) thought the date set by the Sub-Committee for the maintenance of existing internal quantitative regulations - the date on which the Final Act was signed - was very arbitrary. He endorsed the statement made by the delegate of Ceylon.

Mr. JOHNSON (New Zealand) supported by Mr. LAMSVELT (Netherlands) thought the case for retaining this provision, as outlined by the United States representative, was very clear, and pointed out that the regulations which would be permitted to be retained under paragraph 6 had probably been imposed at a time when a country was free to apply quantitative restrictions on imports, but internal quantitative regulations had been selected as being more appropriate.

/In answer

In answer to a question by Mr. BAYER (Czechoslovakia), who thought the date the Charter entered into force would be more appropriate than the date of the Charter mentioned in paragraph 6, the CHAIRMAN said the earlier date was selected to avoid giving Members an opportunity to impose new regulations which would be contrary to the paragraph.

Mr. SCARPATI (Argentina) said he did not agree with the provisions of paragraph 6 which would not cover cases of national emergencies or defence arising after the date of the Charter and requiring the use of internal quantitative regulations, especially when the fundamental purpose was not to protect the domestic product even though it was required that a certain percentage should be of domestic origin.

Mr. USMANI (Pakistan) pointed out that existing internal taxes would only require to be eliminated when the Charter came into force whereas existing internal quantitative regulations would have to be eliminated on the date the Final Act was signed. If paragraph 6 were not deleted, he proposed that existing internal taxes and quantitative regulations should be required to be eliminated on the same date.

Mr. SAENZ (Mexico), while agreeing with the representative of Pakistan that the date the Charter came into force would be a more appropriate one than any of those mentioned in paragraph 6, pointed out that the date of the signing of the Final Act had been accepted by the Sub-Committee, including Mexico, as a compromise.

Mr. MAHADEVA (Ceylon) considered it unfair that under Article 18, paragraph 6, a Member could only retain existing regulations subject to negotiations in which concessions would have to be made in return for their elimination, while under Article 14 no compensation was required.

Mr. ALMEIDA (Brazil) maintained provisionally his reservation on paragraph 6, pending instructions from his Government. He referred to the amendment to paragraph 6 proposed by Brazil, which had been rejected in Sub-Committee. This amendment would have provided exceptions for regulations for security, not protective, purposes.

Mr. ADARKAR (India) suggested paragraph 6 be adopted, but that the points raised by the representative of Ceylon, who was not opposed to the procedure of paragraph 6 but was concerned by the difference in that procedure and the one set forth in Article 14, be brought to the attention of the Sub-Committee studying Article 14.

Mr. BURGESS (United Kingdom) agreed with the representative of the United States that while the complete elimination of existing internal quantitative restrictions was desirable, it was not politically practicable.

/The CHAIRMAN

The CHAIRMAN stated that any delegation might call to the attention of the Sub-Committee studying Article 14 the relation between that Article and paragraph 6 of Article 18.

The CHAIRMAN stated that discussion of Article 18 would be continued at the next meeting, as well as Articles 19, 31A and the Report of Working Party No. 6 on Article 20.

The meeting rose at 7.15 p.m.