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THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE A (ARTICLES 16, 17, 18, 19)

NOTES OF THE TWENTY-THIRD MEETING

Held on Friday, 16 January 1948, at 10.30 a.m.

Chairman: Dr. G. A. LAMSVELT (Netherlands)

ARTICLE 18 - NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

1. Exceptions to national treatment on regulation (paragraph 2)

Item 65 - (Argentina)

On the suggestion of the Argentinian delegate it was agreed to defer discussion of this proposal pending consideration of amendments to paragraph 4.

Item 70 - (Norway)

The Sub-Committee was of the opinion that this amendment would not be necessary because paragraphs 3 (a) and (b) as drafted would permit the use of internal mixing regulations required to enforce standards and even to protect one domestic industry against another, provided such regulations did not have the effect of protecting the domestic as compared to the imported product.

In reply to a question by the Norwegian delegate, the United States delegate pointed out that the words "in effect" in sub-paragraph 3 (a) were intended to cover domestic mixing regulations requiring that no more than a specific amount or proportion should be of foreign origin, which would, of course, have the same effect as requiring that a certain amount or proportion must be of domestic origin. *Geneva Draft*

The Sub-Committee agreed to the interpretation of paragraphs 3 and 4 set forth in the Report of the Sub-Committee on Articles 14, 15 and 24 (16, 18 and 17) in Geneva, as follows:

".....the present draft is aimed at preventing only those internal quantitative regulations which are clearly directed against imported products for the purposes of protecting domestic products....."

"The Sub-Committee is of the opinion that paragraph 3 as now drafted would not prohibit the continuance of a tariff system which permits the entry of a product at a rate of duty lower than the normal tariff rate, provided the product is mixed or used with a certain proportion

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of a similar product of national origin. The Sub-Committee considered that such a provision would not be regarded as an internal quantitative regulation in terms of this paragraph for the reason that the use of a percentage of the local product is not made compulsory nor is the importation of the product in any way restricted.

"The Sub-Committee was also in agreement that under the provisions of paragraphs 3 and 4 regulations would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against the domestic production of another product (say, domestic oleomargarine) as they are against imports (say, imported oleomargarine)."

The Norwegian delegate indicated that he would withdraw his amendment (Item 70), on the understanding that a satisfactory explanation of the intention of paragraphs 5 (a) and (b), along the lines of the Geneva Sub-Committee's Report, would be included in the Sub-Committee's Report.

2. Limitations on "mixing" regulations (paragraph 3)

Item 60 - (Mexico)

The delegate of Mexico explained that this amendment had been submitted because his delegation considered it unfair that internal quantitative regulations maintained under paragraph 4 of Article 18 were subject to negotiation for their limitation, liberalization or elimination, whereas import restrictions on agricultural or fisheries products permitted under Article 20 were not subject to negotiation. His delegation had now concluded from the discussions in Sub-Committee E that quantitative restrictions under Article 20 (2) (c) would be subject to negotiation, and would be prepared to withdraw its proposal to delete paragraph 3 of Article 18 provided the following sentence was added to sub-paragraph 3 (a):

"The provisions of this sub-paragraph shall apply to Article 20 (2) (c)."

The Cuban, French, United Kingdom and United States delegates considered that the provisions of Article 20 (2) (c) and of Article 18 (4) were in no way analogous since one referred to restrictions on imports and the other to mixing regulations on products after importation.

The Mexican delegate insisted that Article 20 (2) (c) was analogous to paragraph 3 (a) in that any quantitative restriction on imports would have an effect on the proportions of the domestic and imported products which could be mixed and therefore would come within the meaning of the words "formally or in effect" in paragraph 3 (a) of Article 18.

The Cuban delegate was inclined to agree that the Mexican delegate might have a point with respect to "processing or use" in paragraph 3, since import restrictions would automatically affect the "use" of domestic products, if

/the words

the words "processing and use" were intended to connote something apart from "mixing".

The French delegate believed there was an inconsistency in permitting the retention of internal quantitative restrictions only subject to limitation, liberalization or elimination by negotiation, whereas under the procedure of Article 20 a Member could be authorized to retain existing quantitative restrictions without negotiating.

The delegate of the United States recalled that the United States originally favoured the elimination of all quantitative restrictions, including internal. However, internal quantitative regulations were probably less objectionable than quantitative restrictions because (a) the number of mixing regulations in existence was small compared to the number of quantitative restrictions; (b) whereas quantitative restrictions limited the total quantity of imports, internal mixing regulations regulated only the proportion of domestic and imported products in relation to total consumption. With respect to any distinction having been intended between the words "mixture, processing or use", he felt that these words must be considered in connection with the modifying phrase "in specified amounts or proportions".

The Mexican delegate proposed that

1. The language of Article 18 (3) be clarified;
2. The relationship, if any, between Article 18 (3) and Article 20 (2)(c) be determined. This could be deferred until Sub-Committee E had finished its consideration of Article 20. Meanwhile, the Mexican delegate reserved his position regarding Article 18 (3) pending availability of the final text of Article 20.

It was agreed that the Working Party should consider (a) clarification of the language of Article 18 (3), particularly the words "formally or in effect" in sub-paragraph 3 (a), and (b) the Mexican proposal to add a sentence to sub-paragraph 3 (a) (see page 2) in the light of the final text of Article 20.

Items 61 and 66 - (Ceylon)

It was the sense of the Sub-Committee that Item 61 should be adopted, since it reflected the original intention of the drafters, but it was referred to the Working Party for appropriate wording.

The delegate of China expressed full support for the Ceylon proposals (Items 61 and 66).

Otherwise, there was no support in the Sub-Committee for Item 66. It was agreed however that the Cuban delegate's suggestion that sub-paragraph 4 (b) might be amended to make it clear that internal quantitative

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regulations, in particular cases, were less restrictive than quantitative restrictions, should be discussed by the Working Party.

The delegate of New Zealand indicated that his delegation would be prepared to withdraw its reservation to sub-paragraph 3 (b) made in Geneva if the present draft of Article 18 (3) and (4) and of Article 13 remained substantially as now drafted.

Item 62 - (Ireland)

The delegate of Ireland explained that his delegation was primarily concerned to maintain an existing mixing regulation requiring the mixture of a certain proportion of industrial alcohol made from domestic potatoes with imported petroleum.

There was no support for Item 62, as drafted, on the grounds that it would constitute a wide escape clause to Article 18. It was, however, agreed to refer it to the Working Party to see if the particular problem with which Ireland was concerned could be met under sub-paragraph 4 (b).

The delegate of Ireland indicated that his delegation would withdraw their proposed amendment if it were made clear in the Conference records that their particular case would be covered by the provisions of sub-paragraph 4 (b).

Item 63 - (Ceylon)

The delegate of Ceylon indicated that his delegation would not press this amendment.
