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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

First Meeting
Held on Monday, 28 October 1946
at 3 p.m

Chairman: Mr. VIDELA (Chile)

The CHAIRMAN opened the meeting by welcoming Dr. SPEEKENBRINK (Netherlands), Chairman of Committee II, who had kindly offered to assist him in his many duties as Chairman of the Technical Sub-Committee.

1. Records of the Technical Sub-Committee

The CHAIRMAN proposed that a restricted circulation of the records of the meetings of the Technical Sub-Committee should be made to members of the Sub-Committee, as well as to members of other interested Committees.

The proposal was adopted.

2. Discussion of the Agenda

The Committee proceeded to discuss the provisional agenda.

Mr. CHERRY (South Africa) suggested that discussion of items A.3 and A.10 of the provisional agenda should be postponed till a later date, suitable notice of which should be given in order to enable his alternative delegate to replace him.

Mr. MORTON (Australia) felt that items A.2 to 10 of the provisional agenda could be discussed in their present sequence, provided that the Delegates were given one day's notice.

Mr. RHYDDERCH (United Kingdom) supported the Australian proposal.

Vicomte du PARC (Belgium) reminded the Committee that it had been previously suggested that Delegates should hand in their suggestions to a Rapporteur, who would prepare a resume, in English and French, of the various points of view and proposed amendments, in order to expedite the work of the Sub-Committee. He felt that one Rapporteur would be unable to deal with the volume of work, and suggested the appointment of two, or possibly three, Rapporteurs.

The CHAIRMAN agreed with the Belgian representative's suggestion.

Mr. NEHRU (India) thought that only points upon which agreement or disagreement existed should be reported, leaving the drafting to a later date.

Mr. ROUX (France) and Mr. JOHNSON (United States) were appointed as Rapporteurs to the Technical Sub-Committee.

The CHAIRMAN pointed out that the Sub-Committee had before it documents submitted by the Australian, Brazilian, French Indian, Norwegian, South African, and United Kingdom delegations, which should provide ample material for discussion. He then called on Mr. JOHNSON (United States) to give his views in explanation of the separate Articles.

3. General discussion of National Treatment on Internal Taxation and Regulation.

Mr. JOHNSON (United States) said that A.2, which was the first item on the proposed Agenda, was Article 9 of the Charter. This Article had been discussed in the main Committee (Committee II) where it had been tentatively agreed to delete the words "by or" in order to limit the provisions of the Article to goods used by the Government itself. In other words, these provisions would not apply to goods purchased by governmental agencies for re-sale.

Mr. ROUX (France) thought that a separate Article should be provided in the Charter to cover all matters concerning purchases

by governmental agencies. He felt that this would be preferable to having such provisions included in several parts of the Charter.

The CHAIRMAN stated that the Drafting Committee of the Sub-Committee on Procedure was drafting on public purchase provisions, and that rapporteurs of the Technical Sub-Committee could always consult with the said Drafting Committee. He suggested that the present discussion should not include consideration of the question of purchases by governmental agencies.

This procedure was agreed.

Mr. ROUX (France) asked the United States Delegate to explain paragraph 2 of Article 9 of the Charter concerning internal taxation.

Mr. JOHNSON (United States) replied that paragraph 2 of Article 9 stated the principle that taxation should not be used for protective purposes. The member government would be under an obligation not to use taxes for such purposes, and would endeavour to keep states and lower governmental units from so doing.

Mr. RODRIGUEZ (Brazil) agreed with the principle set forth in paragraph 2 of Article 9. Brazil, he said, had internal taxes which appeared to be discriminatory, since the tax on a finished domestic product was lower than the corresponding tax on an imported product. Such discrimination was more apparent than real, however, since the raw and semi-finished materials used in, or in connection with, the manufacture of the domestic product were likewise taxed.

In short, a domestic product might be taxed in several ways, while an imported product was only subject to one tax.

He stressed the difficulties of countries like Brazil which were dependent for revenue on widespread consumption taxes. But Brazil would follow the United States lead as far as possible.

Mr. SIM (Canada) drew attention to an apparent contradiction between paragraphs 1 and 2 of Article 9. The first would apparently

prohibit different treatment of domestic and foreign goods with respect to internal taxation and regulation. The second appeared to condone present differences of treatment. He understood the American Delegate to have said that the second paragraph related mainly to secondary governments over which the central government lacked authority. He asked the American Delegate if his understanding was correct.

Mr. JOHNSON (United States) said that it was.

Mr. SIM (Canada) added that Canada agreed that internal taxes should not be used for protection.

Mr. NEHRU (India) understood that paragraph 1 of Article 9 would apply mainly to member (central) governments, while paragraph 2 would apply to state, provincial, or local governments.

He spoke of the difficulty of determining what was, or was not, a "like product" within the meaning of paragraph 1. Would for example whisky manufactured in India and whisky imported into India be considered as like products ? He agreed fully with the principle that internal taxes should not be imposed for the purpose of protection; but he felt that there should be no objection to such discrimination, if its purpose was the raising of revenue. He felt that the Article should be amended in such a way as to take this distinction into account.

Mr. JOHNSON (United States) said that the Delegate for India had correctly understood the different applications of paragraphs 1 and 2. With respect to the problem of defining "like products", he felt that there would have to be a development of "case law". In the case put by the Delegate for India, he would say that, if there was a substantial difference in the prices of domestically produced and imported whiskies, a difference which had not been caused by discriminatory taxes, it might be fair to consider that the two

whiskies were not like products. An amendment on the lines suggested by the Indian Delegate would, in any case, be quite proper, if the Committee agreed.

Mr. VAN DEN BERG (Netherlands) said that he had not interpreted paragraphs 1 and 2 in the same way as the American Delegate had. It had seemed to him that both paragraphs dealt with obligations of both central and local governments.

He felt that competitive products were not the same as like products. If a country produced product A, but not product B, the two products being similar but not the same, it might wish to place an internal tax on B so as to protect A.

The purpose of paragraph 1, as he understood it, was to prohibit higher taxes on imported products than on like domestic products, while the purpose of paragraph 2 was to guard against the more concealed types of discriminatory taxation.

Mr. JOHNSON (United States) said that the practices described by the Netherlands Delegate would be prohibited by the two paragraphs of the Article. Competitive articles should not be charged higher taxes to prevent their importation. Of course, it would be hard to determine whether A and B were, or were not, competitive. The purpose of the two paragraphs was to provide, in so far as possible, against internal taxation being used as a means of protecting domestic industries.

He pointed out that in several countries it would be constitutionally impossible to control the actions of states and other lower taxing authorities. Hence paragraph 1 could not have the full scope which the Netherlands Delegate attributed to it.

Mr. ROUX (France) was surprised at the interpretation which had been given to paragraph 2. The distinction between national and lower governmental units did not seem to be apparent in the

two paragraphs.

The second paragraph appeared to be based on the decision of the 1927 Economic Conference that internal taxes should not be used to protect domestic products from competition of foreign products. If such a provision was to be included in the Charter, it should cover all governments, central and local.

By a series of examples he emphasized the complexities which were involved. In the case of coffee Brazil, which produced coffee, could not impose a higher tax on imported coffee than on domestically produced coffee. If Czechoslovakia, which produced no coffee, were to impose an internal tax on coffee, it would have the same effect as a customs duty. France could not impose a tax on coffee, unless it placed a similar tax on chicory, a competitive product.

Therefore he felt that the Charter should follow the principle that no tax should be imposed on foreign products unless similar products were produced domestically.

There should be no distinction between levels of government. If such distinctions had to be accepted, the national government should be prohibited from charging higher taxes on foreign products than on domestic products. Local governments should not be permitted to impose new discriminatory taxes; and an end should be made of all existing discriminatory taxes.

Mr. RHYDDERCH (United Kingdom) said that the United Kingdom agreed generally with Article 9, but felt that the wording of the first sentence of paragraph 1 should be extended to refer to "internal taxes and other internal charges imposed on, or in connection with, like products ....."

He suggested that the word "exhibition" should be deleted from paragraph 1 of Article 9. Films had to be dealt with on a different basis from other goods because important factors, other than purely commercial, were involved. Films should be dealt with in separate

bilateral negotiations.

Mr. MORTON (Australia) described measures which the Australian Government had taken with respect to alcohol and tobacco. Australia required that imported petrol should be mixed with alcohol, produced domestically from wheat. Tobacco manufacturers, whose products contained fifteen per cent of Australian tobacco could import foreign leaf tobacco at a lower rate of customs duty. He asked the United States delegate whether these practices would be considered inconsistent with the provisions of Article 9.

Mr. JOHNSON (United States) said that the requirement that domestically produced alcohol should be mixed with imported petrol would constitute a violation of Article 9, since it would reduce the part played by an imported commodity in the domestic economy. The practice of inducing tobacco manufacturers to mix domestic with foreign tobacco was not so objectionable as the regulation concerning mixing alcohol with petrol; but it was inconsistent with the objective of Article 9, if not directly contrary to its terms, since it was an effort to interfere with the use of a foreign product.

Mr. JOHNSEN (New Zealand) said that New Zealand did not discriminate against foreign goods.

He felt that the wording of paragraph 1, preventing internal taxes "higher than those imposed on like products of national origin", would cause difficulties with respect to New Zealand's film (cinema) rental tax. The former import duty on foreign films had been given up and replaced by a system of imposing an internal film rental tax. The wording of paragraph 1 would require the abolition of the tax, since New Zealand had no domestic film industry. Furthermore, Empire films had enjoyed an internal tax preference, which paragraph 1 would automatically eliminate altogether; and New Zealand could not obtain any concessions in return for giving up the preference.

He described regulations in his country with respect to the mixing of domestic products with imported products (tobacco, wool packs, unassembled automobiles). He felt that these regulations were not restrictive of trade, and that there should be an exception to the last sentence of paragraph 1 permitting regulations of this type, providing that the country imposing them consulted with the International Trade Organization.

The CHAIRMAN suggested that the rapporteurs, with the help of the Secretariat, should analyse the proposals submitted by various delegations and the discussion which had taken place, and prepare two summaries - one to deal with questions in connection with the general principles set forth in Article 9, the other to cover the problem of exceptions from the general principles.

Any further written statements of delegations should be submitted by the evening of 29 October.

Dr. SPEEKENBRINK (Netherlands) felt that the experience of the Sub-Committee on Procedure had shown that summaries of the type suggested by the Chairman would be extremely useful.

The Chairman's suggestion was agreed to.

Mr. CHERRY (South Africa) agreed with the principle of non-discrimination in internal taxation.

He asked whether the term "transportation" as used in paragraph 1 of Article 9 referred to facilities, rating, or both. There would appear to be some overlapping with paragraph 4 of Article 10.

He said that South Africa had special arrangements with contiguous areas whereby traffic going to such areas got special treatment.

Effectuation of the requirements of Article 9 with respect to transportation would vary in different countries, according to whether railways were state-owned or privately owned.

He called the attention of the Committee to the existence of discriminatory sea freight rates, under which similar goods were carried equal distances at different rates, according to the zones of transit. Sometimes higher rates were charged for relatively short distances. He hoped the Sub-Committee could suggest ways to bring about more equitable rating.

It was understandable that a central government might not be able to control taxation practices of state and local governments. He noted that paragraph 2 was intended to stop local governments from applying further discriminatory taxes; he wondered, however, how the central government could prevent local governments from imposing future discriminatory taxes, if it was unable to persuade them to terminate old ones. That was a very important problem, because discriminatory imposition of internal taxes might nullify a tariff reduction.

Mr. RODRIGUES (Brazil) felt strongly that the special problems of less developed countries ought to be taken into consideration in the provisions of the Charter with respect to internal taxation. Brazil had regulations on the subject of mixing, the purpose of which was to increase the production of domestic products. He did not feel that such requirements were undesirable in cases of certain basic products. The last sentence of the first paragraph of Article 9 was too far-reaching and should be replaced by some simpler provision, which would take the special problems of undeveloped countries into consideration.

Mr. VAN DEN BERG (Netherlands) said that the delegations of the Netherlands and Belgium-Luxembourg agreed with the principle embodied in Article 9. There was need for exceptions in the case of certain regulations concerning mixing and films. The essential was that the provision should be really reciprocal. If states or local governments within a federal state could retain and maintain existing discriminations, other nations would not really be getting

reciprocal treatment. If possible, all discriminations, whether by central, state, or local governments should be dealt with on the same basis. If this was impossible, state and local governments should certainly be prevented from establishing new discriminations.

He felt that the Charter should provide a time limit, within which members would be required to abolish discriminatory taxes and practices. Since some countries had depended hitherto on internal taxes for the protection of domestic industries, he wondered whether such taxes could not be replaced by new or increased import duties.

The expression "products of any Member country" at the beginning of paragraph 1 did not seem to him quite clear. He thought it might be replaced by the expression "products originating in a Member country." There was also need of clarification in Article 8. The French delegation had already proposed new wording for Articles 8 and 9.

Mr. ROUX (France) pointed out that the purpose of the French proposal, referred to by the Netherlands' Delegate, was to limit the benefits of most-favoured-nation treatment to goods actually originating in Member countries, and to prevent such treatment from being accorded to goods which, while having their origin in non-member states, were trans-shipped from member states. France had suggested the requirement of a certificate of origin.

The CHAIRMAN suggested that at its next meeting the Sub-Committee should finish its discussion of Item A-2 of the agenda, and proceed with the discussion of A-3 and A-4. It might also be possible to discuss the provisions of Article 9 with respect to regulations governing purchases by governmental agencies.

After considerable discussion of possible ways of speeding up the work of the Sub-Committee, it was agreed to proceed, as had been suggested by the Chairman, and to meet again on 31 October 1946 at 10.30 a.m.

The meeting rose at 6.50 p.m.
