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SECOND SESSION OF THE PREPARATORY COMMITTEE OF
THE UNITED NATIONS CONFERENCE ON TRADE AND
EMPLOYMENT.

COMMISSION B.

SUMMARY RECORD.

Fifth Meeting held on Friday, 6th June, at 2.30p.m.
at the Palais des Nations, Geneva.

Chairman: Hon. L. D. WILLGESS (Canada).

CHAPTER VII

Procedure for consideration of Chapter VII.

The CHAIRMAN proposed that the Drafting Committee's text of Chapter VII should be used as a basis of discussion by the Commission. Amendments and suggestions submitted by Delegations had been incorporated in the annotated agenda (E/PC/T/W/157.Rev.1) prepared by the Secretariat and would be taken in the order listed in that document. Views of the delegations that could not be reconciled during the meeting of the Commission would be referred to a sub-committee which would also consider drafting changes.

Arrangement of Chapter VII.

The CHAIRMAN outlined the arrangement of the Chapter as in the London and New York drafts and drew attention to the proposals for rearrangement submitted by the UNITED KINGDOM and AUSTRALIAN delegations. He suggested a general discussion of the question of the rearrangement of the Chapter, to be followed by a discussion of the individual articles.

Mr. E. MCCARTHY (Australia) pointed out the necessity to clarify the meaning of the words "arrangements" and "agreements" as used in the London and New York drafts.

In his opinion the four sections contained in the Report of the First Session should be restored in a modified form. The word "arrangements" should be applied to the whole of Chapter VII. For clarity these arrangements might then be divided into two classes of agreements: regulatory and non-regulatory. In his opinion the meaning of the phrase "regulatory agreements" was clear from the text, but the words "non-regulatory agreements" would need definition. For this reason the Australian delegation suggested the addition of an article defining the types of agreement.

Mr. J. R. C. HELMORE explained the rearrangement of the Chapter suggested by the United Kingdom Delegation. The proposed addition of an Article 47A was an attempt to explain at an early stage of the Chapter the different conditions and procedures surrounding regulatory and non-regulatory arrangements. If all reference to non-regulatory arrangements were omitted from the Chapter, the whole of Chapter VII would need re-organisation. In his opinion arrangements of a non-regulatory character could be useful; such arrangements might be expansionary measures not necessarily involving regulations of trade but yet limiting the degree of action which governments might take.

Mr. J. A. GUERRA (Cuba) was of the opinion that the changes submitted by the United Kingdom delegation were only changes in form and not in substance. He did not consider that the Australian amendment for the addition of a new Section would constitute an improvement to the Chapter.

Mr. J. J. DEUTSCH (Canada) agreed that the present text was lacking in clarity especially as to the procedure

to be followed in the development of a commodity agreement and therefore approved of the amendment submitted by the United Kingdom Delegation. He doubted whether the distinction between regulatory and non-regulatory agreements was realistic and useful.

Dr. E. de VRIES (Netherlands) found the distinction between regulatory and non-regulatory agreements useful as he thought there was scope for the conclusion of non-regulatory agreements. He cited as examples the permanent Study Groups, expansionist agreements and agreement which require regulations only if certain conditions should be realized.

Mr. C. O. L. WHITE (New Zealand) stated that he did not have any strong views on the arrangement of the Chapter. He thought the additional Article 51A as drafted by the Australian delegation constituted a change in substance with which he agreed. He supported the new type of definition of non-regulatory agreements contained in this suggested Article.

Mr. R. B. SCHWENGER (United States) expressed the opinion that it was useful to attempt an improvement in the form of the Chapter, but he thought that no change should be made in the substance incorporated in the London and New York drafts. The distinction between regulatory and non-regulatory agreements was a basically useful one.

Mr. S. J. de SWARDT (Union of South Africa) was of the opinion that the only difference which existed between the two kinds of agreements was one of degree and, therefore, there was no justification to deal with them under different headings.

Mr. E. McCARTHY (Australia) reiterated his opinion in favor of maintaining a clear distinction between regulatory and non-regulatory agreements. It would be undesirable to preclude a useful arrangement containing a minor degree of regulation merely because it was strictly a "regulatory agreement". If, for example, the number of countries participating in an arrangement were small, or the arrangement involved only a small degree regulation or if public opinion were not ready for the acceptance of a regulatory agreement it should nevertheless be possible to conclude an agreement of a non-regulatory character.

Mr. J.R.C. HELMORE (United Kingdom) stated that in his opinion there were two solutions to the problem faced by the Commission; either to re-consider Article 52 which sets out the circumstances in which a regulatory agreement may be used, or to revise the definition of regulatory agreements. He was opposed to substantial alteration of Article 52 as that would involve extension of the circumstances justifying departure from the provisions of Chapter V. He favoured the second alternative but considered that the amendment suggested by the Australian delegation went too far and would require some provision for independent determination of what was a "substantial" degree of regulation.

Mr. E. McCARTHY (Australia) suggested that the Organization might be given some criteria.

Mr. J.J. DEUTSCH (Canada) suggested that an attempt should be made to narrow the definition of a regulatory agreement. This would allow certain commodity situations to be met with arrangements that might not fulfil the rigorous conditions stipulated for regulatory agreements.

Mr. PETER (France) emphasized the need for careful distinction in order to allow a certain amount of freedom in the drafting of arrangements not subject to strict rules.

Mr. J.A. GUERRA (Cuba) said that the discussion had made it clear that there was no such thing as a non-regulatory arrangement. There were, in fact, two kinds of agreement, both of which were regulatory, the one, however, involving a greater degree of regulation than the other. If this were agreed in principle it would necessitate not only re-arrangement of the Chapter, but also changes in the types of difficulties and conditions under which those arrangements could be established. At this stage he could not commit his delegation to any view on such changes.

Mr. H.E.Z. AUGENTHALER (Czechoslovakia) suggested that it might help to clarify these problems of definition and arrangement if further discussion were deferred until after the amendments to the Chapter had been considered.

The CHAIRMAN proposed that the arrangement of the Chapter should be referred to a sub-committee, and this was agreed.

Functions of Specialized Agencies in relation to Commodity Arrangements.

It was agreed to defer consideration of the French delegation's proposal for study of a division of competence between the F.A.O. and the I.T.O. until Article 50 came up for discussion.

Brazilian Reservation to Chapter VII

Mr. MARTINS (Brazil) explained the reservation of his delegation regarding the whole Chapter insofar as its operation might interfere with the production of primary commodities for

home consumption. He argued that commodity arrangements should not prevent insufficiently developed countries from increasing their production. He proposed to submit an amendment to Article 59 which, if accepted, would enable him to withdraw his Delegation's reservation.

Mr. J.A. GUERRA (Cuba) asked for clarification of the Brazilian position. He pointed out that commodity arrangements were entirely voluntary, and that there was no compulsion on under-developed countries to participate if they thought that participation would be to their disadvantage.

Mr. MARTINS (Brazil) replied that in practice countries outside an agreement would not have the same opportunities for development and expansion as those inside, and therefore had no alternative but to join.

The CHAIRMAN expressed the hope that after Article 59 had been discussed the Brazilian Delegation would be able to withdraw its reservation.

Matters in Chapter V arising out of consideration of Chapter VII.

(a) Article 36:

The CHAIRMAN stated that in connection with the note of the Drafting Committee's Report regarding the relation of Chapter VII to Article 36, the Secretariat was drawing the attention of Commission A to this matter, and there was no need for Commission B to consider it.

(b) Article 37:

Mr. J.R.C. HELMORE (United Kingdom) explained the purpose of his delegation's proposal to insert a reference to Chapter VII in Article 37 ("General Exceptions"). He stated that the only reference to Chapter VII at present to be found in Chapter V

applied to quantitative restrictions. Commodity arrangements under Chapter VII, however, would involve other forms of regulation; hence the need for a more general reference in Chapter V. There would be a consequential change involving deletion of sub-paragraph (d) of paragraph (2) of Article 25.

Mr. J. GUERRA (Cuba) stated that he had no particular objection to the United Kingdom proposal, but suggested that the matter should be deferred until decisions were reached on the questions discussed earlier in the meeting.

The CHAIRMAN proposed that the Cuban Delegate's suggestion should be accepted, but pointed out that the matter might have to be brought up sooner if, in the meantime it was found that Article 37 was coming up for discussion by Commission A. This was agreed.

The Meeting adjourned until Monday, 9th June, at 2.30 p.m.