

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.AD HOC SUB-COMMITTEE ON ARTICLES 14, 15 and 24NOTE BY THE SECRETARIATON ARTICLES 15 and 15 A

The following note should be read in conjunction with the Annotated Agenda for discussion of Articles 14, 15, 15 A and 24 (W.150) and the Report of the Drafting Committee. It indicates briefly the decisions taken in connection with the general discussion of these Articles in Commission A and refers to new amendments suggested or other points raised during that discussion.

Sources: E/PC/T/A/PV.9 and E/PC/T/A/SR.19.

Since the present note was prepared before the last mentioned document had appeared, there are no page references to that document below.

Article 15General Comment (D.C. Report, page 15)

- (a) The suggestion of Brazil (that a paragraph be added to provide for date of entry into force) was withdrawn (A/PV.9, page 2).
- (b) The Cuban reservation appears to be maintained (see under paragraph 1 below).

Paragraph 1

- (a) Deletion of this paragraph has been proposed by Cuba (W.29, page 2), Norway (W.99) and the United States (W.23). The discussion was closely connected with that of paragraph 2 (see below). The following views of countries may be noted:

Belgium, Chile: against deletion of this paragraph (A/PV.9, pages 5, 14-15, 21);

- China: delete paragraph 1; cannot accept United States addition to paragraph 2 (A/PV.9, page 5);
- Cuba: unable to accept paragraph 1 ("our country... is continuously enacting laws to protect its national interest, because there is no other way for the industrialization..."; A/PV.9, page 6);
- Norway: delete paragraph 1 since this is equal to existing paragraph 2 and the first sentence of paragraph 3, but not clear enough. Cannot accept U.S. addition to paragraph 2 (A/PV.9, page 6);
- United Kingdom: Paragraph 1 "too widely worded"; hence delete on condition that United States addition to paragraph 2 be accepted (see below).

The question of deletion was referred to the Sub-Committee (see below).

- (b) The question of the amendments proposed by China (W.79) was not discussed in view of the proposal to delete the whole paragraph (A/PV.9, page 3).

Paragraph 2

- (a) Two reservations on this paragraph were mentioned in the D.C. Report: that of Norway, now withdrawn, since the Norwegian amendment of the whole article (W.99) contains this paragraph, that of India was maintained.
- (b) United States amendment, involving an addition to this paragraph (W.123).
- (i) The delegates for the following countries were in favour of this amendment:
- Canada (A/PV.9, page 9);
- Brazil (ditto page 13);
- Belgium (except for the words "impose new or higher internal taxes on the products of other Member countries"; to this the delegate for the United States replied that it had not been thought advisable "to try to force the repeal of all existing measures of this kind which... are relatively few", cf. A/PV.9, page 13);
- United Kingdom (see under paragraph 1 above);
- Union of South Africa (rule required as counterpart of tariff concessions; A/PV.9, page 20).

(ii) The delegates for the following countries were against the amendment:

China ("national treatment" should be confined to taxes only: "this is as far as we can go"; otherwise industrialization will become difficult, cf. A/PV.9, page 11; to this the United States delegate replied that his amendment "does not deal with anything other than taxes"; cf. ditto page 13);

Chile (the amendment conflicts with the spirit of paragraph 1; there are in this paragraph - including the first sentence - too many terms requiring proper definition: "directly or indirectly", "substantial", "like products", "competitive products"; cf. A/PV.9, pages 14-15);

France (agrees with Chile, A/PV.9, page 16);

India (referring to its provincial sales taxes. The provision suggested would lead to dispute; cf. A/PV.9, page 16).

It was decided that the question should be referred to the Sub-Committee which should consider "whether some redraft of paragraph 2 is possible so as to meet such points as the one presented by the delegate of the United Kingdom and so as to clear away the objections of the delegate of Chile; and also to see whether, in the light of the draft they arrive at, it would be right to omit paragraph 1..." (A/PV.9, page 21).

(c) In connection with the discussion of the United States amendment, the following points were made with reference to the old text of paragraph 2:

India: maintains its reservation (cf. A/PV.9, page 16);

Brazil: was in doubt concerning the words "directly or indirectly" and asked whether the U.S. corporation income tax would be permitted; thought the provision should cover only a discriminatory tax on products; to this the United States delegate replied that the word "indirectly" would cover even a tax not on a product as such but on the processing of the product (A/PV.9, page 19).

Note: In this connection, the United States delegate said that it might be useful "to delete the words 'directly or indirectly' in the fourth line, and insert them in the second line, before 'internal taxes' ". In another connection, he pointed out that it might be better to say 'increased internal taxes' than 'higher internal taxes'.

Chile: the words "directly or indirectly" require proper definition (see under (b) above).

(d) Chilean amendment (W.56).

It was agreed that paragraph 2, as it stands, would not conflict with the spirit of this amendment, and that the first foot note (on page 69 of the D.C. Report) to Article VIII of the General Agreement would also apply in spirit and definition to the Charter itself. The Chilean delegate was satisfied with this interpretation (A/PV.9, page 24).

Paragraph 3

- (a) Of the four reservations as to requirements concerning mixing, processing, etc., mentioned under (a) in the D.C. Report (page 11), those of the Netherlands, New Zealand and the Union of South Africa were substantiated by amendments presented by the same countries (W.166 and W.62). The delegate for the fourth country, Brazil, had asked for instructions from his government and would communicate them to the Sub-Committee.
- (b) The country suggesting an addition of a second proviso and reserving its position on the last sentence (D.C. Report, page 11, (b)) was Czechoslovakia (W.150 wrongly says New Zealand). This reservation appears now superseded by the amendment presented by Czechoslovakia and certain other countries in W.166.
- (c) The Union of South Africa proposed that the word "transportation" in line 7 of this paragraph be deleted (W.62). The delegate of that country suggested that the Preparatory Committee "might deal with the whole subject of transportation on the basis of the Report of the Commission B (cf. E/PC/T.183, according to which Article 44 A should provide for complaint and consultation in the case a Member's interests are prejudiced by business practices in connection with services); cf. also A/PV.9, pages 31-44.

The delegate for India supported the amendment (freight rates may differ according to the value of the goods moved; hence the words "like products" may lead to dispute; A/PV.9, page 30).

The following countries opposed the amendment:

- Australia (suggested, however, that the rule on transportation might be applied in full only to laws, regulations and requirements that might be established in the future, and applied to the past only in so far as justified complaints were received; cf. A/PV.9, page 41);
- Belgium (principle of non-discrimination to be established, cf. A/PV.9, page 36; the ITO might form a body of experts to deal with its application; recommended the Australian suggestion, cf. A/PV.9, page 43);
- Brazil (ditto, page 27);

Cuba (stated, however, that it might be useful to await acceptance of the new Article 44 A, ditto, page 29);

United States (if the principle of basing freight charges on what the traffic will bear leads to discrimination, the affected country could make complaint under Article 35; the burden of proof would be on the complaining country; "as a result of complaints.... you might get some practical application of these principles"...; A/PV.9, page 45).

The South African amendment was referred to the Sub-Committee which "should not try to come to any decision until after Commission B has dealt with the unanimous report of its first sub-committee". The decision of Commission B and the discussion in Commission A will provide the background for the examination in the Sub-Committee (A/PV.9, page 45).

(d) The amendments to paragraph 3 suggested by the United States (W.23), Cuba (W.29), Benelux, Czechoslovakia and New Zealand (W.106), India (W.25), Norway (W.99) and China (W.79) were discussed together. Points raised during the discussion are classified below together with the amendments with which they appeared to be most closely connected. The question concerning cinematograph films, however, was excluded from this part of the discussion and will be dealt with separately under paragraph 4 below.

(i) United States amendment (W.23)

A statement made by the United States delegate in Commission A is attached to this document.

(ii) Cuban and Norwegian suggestions (W.29 and 99) that the second and third sentences of the paragraph be deleted.

The Cuban delegate said the reason for his suggestion was that the matter was so complicated that it could not be handled by international rules (A/PV.9, page 50).

The Norwegian delegate said certain mixing regulations were indispensable for countries with a planned economy (ditto, pages 50-51). Referring to the United States statement (mentioned under (i) above) he said that the issue was whether a country would be allowed to introduce regulations which would lead to a decrease in the import of raw materials.

Chile: agreed with the proposed deletion.

Found the application of the paragraph dangerous because of "inaccurate definition".

United Kingdom: opposed to deletion. These sentences are complements to the first sentence. Without them, loophole with same effect as quantitative restrictions. But the rule should not go beyond mixing requirements for "like products"; it should not apply, for instance, to the mixing of margarine with butter.

Union of South Africa : "We will not get very far with this question of mixing until we have a much closer definition of what is meant by it."

(iii) Amendments of Benelux, Czechoslovakia and New Zealand

(W.106) :

Czechoslovakia : mixing regulations not always restrictive. Private mixing practices could not be ignored since they might become governmental in the case of nationalization of industries.

New Zealand : Prohibition of mixing regulations might also be restrictive. One would then have to have recourse to subsidies and tariffs which are not always satisfactory. Mixing of foreign with domestic wheat aims at raising quality of the flour.

France : Countries find it difficult to adjust their regulations in accordance with the text of this paragraph; hence necessary to render it less severe. W.106 should serve as basis for discussion.

Netherlands : Needed mixing regulations for wheat. Could not modify its position but willing to have the case examined by the Sub-Committee.

Brazil : Needed mixing regulations for coal, alcohol. Has asked for instructions and would communicate them to the Sub-Committee.

(iv) Indian amendment (W.25) : The Indian delegate pointed out that his amendment was similar to that of Benelux and Czechoslovakia (W.106). The Sub-Committee might discuss which of them was preferable. He thought the Indian suggestion preferable since it did not contain the stipulation "unless the effect ... is not more restrictive" etc. which might be a source of argument.

(v) Chinese amendment (W.79) involving deletion of the whole paragraph : The Chinese delegate explained that the reason for his suggestion was that "any attempt to extend the scope of national treatment beyond taxation would be going too far to be acceptable to us" (A/PV.9, page 49; see also under paragraph 1, letter (a) above).

The question of the amendments now mentioned - except in so far as they referred to films - was to be examined by the Sub-Commission in the light of the discussion.

(e) In connection with the discussion of the above amendments it was made clear (after a question put by the delegate for Australia) that the proviso in the second sentence refers to the examples of internal requirements given in that sentence, and not to the "laws, regulations and requirements" mentioned in the first sentence.

- (f) Australian amendment (W.147). The delegate for Australia declared that if a general clause meeting his amendment will be inserted in the Charter, this amendment will become unnecessary. It was agreed that this matter should be considered by the Sub-Committee.

Paragraph 4 (Cinematograph films).

The amendments considered during the discussion were those of Czechoslovakia (W.26), New Zealand (W.106), Norway (W.99, including an addition to paragraph 5) and the United States (W.23, including a suggestion of change concerning films in paragraph 3). The following points may be mentioned :

Chile : Films should not be treated as merchandise. The question should be studied in connection with trade in books, newspapers and paper.

Czechoslovakia : agrees with Norway (see below). Films are not a commodity or industrial product. It should be stated in Article 15:4 or still better in Article 37 that the Charter is not intended to regulate the distribution or exhibition of films. The matter should be left to bilateral negotiations or to another United Nations agency. Suggested that the Head of the Film Division of the United Nations Secretariat should propose and submit to Member Governments a draft on the international convention concerning the exchange of films.

India : asked why the film industry should be accorded special treatment.

New Zealand : The New Zealand amendment (W.106) was introduced to overcome the special difficulty mentioned in the D.C. Report, page 11, letter (c).

Norway : agreed with the United Kingdom (see below) Films are products of art. Referred to this special problem of small countries with a language not spoken outside its frontiers. Question of films should be dealt with by the Human Rights Commission or the Economic and Social Council. It should be put outside the Charter.

Union of South Africa : Films should not be treated as commercial articles; if so, tariffs should have to be increased. It must be possible to apply film quotas.

United Kingdom : Not only economical but also cultural considerations must be taken with regard to films. Paragraph 4 would have been acceptable; but this is as far as the United Kingdom could go. It could not have its film quotas put on a temporary basis; it must reserve its right to apply such quotas. The United Kingdom supported the New Zealand amendment. A provision of this type in Article 15:4 represented a compromise preferable to an exception under Article 37.

United States : There is no reason to treat films otherwise than other commodities. The preference of the audience in the different countries should determine the trade in films.

The question was referred to the Sub-Committee which was to consider the different alternatives presented and to try to find a satisfactory solution.

Paragraph 5.

The amendments considered were those of China (W.79) India (W.25) and the United States (W.23). (The Norwegian amendment to Article 5 had been dealt with in connection with cinematograph films; see under paragraph 4.)

The United States delegate pointed out that the U.S. amendment did not involve any change in substance. He suggested the following addition to the proposed text :

"Moreover, the provisions of this Article shall not apply to Government policies in carrying out any form of subsidy permitted under Article 30."

In reply to a question put by the Czechoslovak delegate, the Chairman pointed out that it might be advantageous to consider paragraph 5 before Article 31 had been dealt with; if it were later found that that Article affected paragraph 5, the question would have to be reconsidered by the Preparatory Committee.

The Chinese delegate, while confirming his amendment, drew attention to the fact that the words in square brackets appeared also in Article 31, paragraph 2.

Paragraph 5 was referred to the Sub-Committee. The Chairman pointed out that the work of the Sub-Committee would be complicated.

Suggested new paragraph

Norwegian proposal of new paragraph concerning equalization of prices "so long as different prices for like products exist on the world market" (W.99)

The United Kingdom delegate thought it would be difficult to express an opinion in the general discussion.

The question of the new paragraph was referred to the Sub-Committee

Suggested addition to General Agreement on Tariffs and Trade, possibly affecting Article 15.

Australian suggestion (W.112). The Australian delegate pointed out that, in view of the footnote to Article VIII of the General Agreement (D.C. Report, page 69), he withdrew his suggestion.

Suggested new Article 15 A.

Suggestions by the United States (W.23) and Brazil (W.105). The chief points raised during the discussion are summarized below.

Australia : The Sub-Committee should not reach a conclusion on this point until it is aware of the effects of incorporating provisions for services generally in the Charter. It appears unwise to bring the question of assistance to shipping under the Charter.

Czechoslovakia : "If we accept services in the Charter, the ... new Article will be nothing but a supplement to Article 25 on boycotts."

India : opposes insertion of this Article. The Indian Government is committed to a policy of assisting shipping, banking and insurance in connection with Indian foreign trade because of the difficulties arising from "the tyranny of private vested interests".

Norway : supports wholeheartedly the U.S. proposal and fully appreciates the good-will behind it.

United States: would be content to have this matter studied by the Sub-Committee. Thinks the amendment "one of practical administration".

The question was referred to the Sub-Committee which was asked not to take any decision until it knew which decision was taken on the general question of services.

ANNEX

Statement by the United States Delegate in
Commission A on June 6th, 1947.

Yesterday questions were raised as to the interpretation of the language of Article 15, paragraph 3, regarding mixing regulations. The language in the New York draft is as follows: "The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product to be mixed, processed or used." The proposed United States amendment at the top of page 6 of E/PC/T/W 150 does not change this language except to substitute the word "any" for the word "an" before the words "imported product" and to insert the word "exhibited" between the words "processed" and "used".

The United States delegation is aware of the complexity of the problems presented by mixing regulations as they affect international trade, and the difficulty of the attempt to deal with them in Article 15. Here, as in many other places in the Charter, it is necessary to use words or phrases which may not be fully precise and which may raise questions of interpretation. And it may be that the phraseology in the New York draft and in the amendment proposed by the United States needs clarification.

In the view of the United States delegation, however, the purpose of this provision is clear and should receive the general approval of all countries represented here. This purpose is to prohibit the use of mixing requirements in order to afford protection to the domestic production of a product.

Clearly, the mixing regulation described by the Norway delegate in his illustration could not be classed as protective in purpose. It would, therefore, in our view not be prohibited by the Charter, and the United States delegation is prepared to consider in the *ad hoc* committee the question of the need of an amendment to make this clear.

The case presented by the illustration of the delegate of Norway is that of a mixing regulation which may be described as follows:

A regulation requiring a product be composed of two or more materials in specified proportions, where all the materials in question are produced domestically in substantial quantities, and where there is no requirement that any specified quantity of any of the materials be of domestic origin.

Stated in this way, it seems obvious that this case is not intended to be covered by Article 15.

The opposite case of mixing regulations to that covered by the illustration of the delegate from Norway is where the regulation requires that a certain percentage of a product of domestic origin be used in the production of another product

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(e.g., that 25 per cent domestic wheat be used in making flour). Such a regulation would limit the use of the like foreign product and, hence, would under any interpretation be contrary to paragraph 3 of Article 15.

A third and more difficult case of mixing regulations are regulations which require that in producing an article a certain percentage of a specified material produced domestically be used when there is a competitive imported material which is not produced domestically in substantial quantities. Here the protective intent is clear. It corresponds in the field of mixing regulations to the type of excise tax sought to be prohibited, in so far as future action is concerned, by the amendment the United States delegation has offered to paragraph 2 and which we discussed yesterday and referred to the Ad Hoc Subcommittee.