

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUB-COMMITTEE C OF COMMITTEE II ON ARTICLES 13 AND 14

NOTES ON THE FOURTH MEETING

Held at the Capitol, Havana, Cuba, on Monday, 12 January 1948 at 6.00 p.m.

Chairman: Mr. GUTIERREZ (Cuba)

The CHAIRMAN said that he had conferred with Mr. Holloway the CHAIRMAN of Sub-Committee E of Committee III on Articles 20 and 22 in particular as to the advisability of a joint meeting. However, the work of Sub-Committee E had not yet reached the stage where such a meeting would be useful.

Mr. ERUDZINSKI (Poland) on the invitation of the Chairman discussed four types of measures:

- (a) consistent with both negotiated and non-negotiated commitments,
- (b) consistent with negotiated commitments, inconsistent with non-negotiated commitments,
- (c) consistent with non-negotiated commitments, inconsistent with negotiated commitments,
- (d) inconsistent with both negotiated and non-negotiated commitments.

Measures of type (a) were not and did not need to be prohibited by the Charter. Measures of type (b) were covered in paragraphs 2 and 4 of Article 13. Measures of types (c) and (d) were both covered in the same way in paragraphs 2 and 3 of Article 13, but in fact the two types were different. Measures of type (c) should be the subject of direct negotiations without the intervention of the Organization. Such measures did not differ greatly from those of type (a) which could be freely imposed.

Mr. SHACKLE (United Kingdom) opposed any proposal that negotiations between the parties directly concerned would be sufficient and that the Organization should not intervene in the case of measures of type (d). But even in the case of measures of type (c) at least other countries with a substantial interest in the question should be consulted. The Organization should sponsor the negotiations because of their primarily multilateral character.

/Mr. VIRATA

Mr. VIRATA (Philippines) agreed with the representative of Poland as regards measures of type (c). He had no objection to the Organization examining the situation, but was opposed to the idea of its having to concur in principle prior to re-negotiations. The Organization should automatically sponsor all re-negotiations. He supported the Chilean amendment to substitute "shall release" for "may release" in paragraph 3 (c).

Mr. DE LEON BELLOC (Argentina) felt that none of the arguments concerning sovereignty, speed and secrecy had been answered. With reference to sovereignty, his country had just emerged from conditions of colonial economy. It wished to be politically sovereign, economically free and socially just. He realized that when a state ratified a treaty, by so doing it relinquished a part of its sovereignty. An agreement between two equal parties, however, was quite different to the handing over of national sovereignty to an international organization. The Charter had to be so drafted that it could be implemented by all Members. Not many countries would be able to fulfill the requirements of Article 13 as it now read. It should be left to Articles 89 and 90 to provide the solution to any problems that might arise.

Mr. VALDES RODRIGUEZ (Cuba) said that to achieve a just compromise between the highly developed and under-developed countries, both groups would have to make certain sacrifices, but at the present time, Article 13 was weighted in favour of the highly developed countries. He did not feel that national sovereignty would be jeopardized through signing the ITO Charter. He shared the views of the Mexican representative that there was no justification for the intervention of the Organization, when two parties to an agreement decided to re-negotiate that agreement. To allow non-participating countries to intervene in such re-negotiations would be to give them an advantage over the countries, which had originally signed the agreement.

Mr. STEWART (Uruguay) explained that he had a legal concept of the word "sovereignty". Sovereignty was "auto-limitation", that is, it could only be violated by imposition from outside.

Mr. TORRES (Brazil) could see no reason why the short-comings of Article 13, which had been pointed out could not be met. It had been suggested that agreements might be modified simply by re-negotiation, that the process of consultation could be simplified and that secrecy must be assured. He then outlined proposals now available in document E/CONF.2/C.2/C/5. In the case of negotiated commitments it should not be necessary to consult all Member of ITO, but only the principle suppliers and

/also those with

also those with a secondary interest, as suggested by the Norwegian representative. The Organization should establish a time-schedule for the negotiations. The Organization should sponsor the negotiations and this might even be of advantage to the countries which had opposed its intervention. It had not been made clear whether Article 40 could be applied in a case in which a request for the right to apply restrictive measures resulted in a flooding of the market of the country in question. It ought to be made clear that the position of a country could be protected during the period before a decision was taken by the Organization.

Mr. LIU (China) felt that there was no need to consult the Organization in connection with the modification of a negotiated commitment, though its good offices could be used if necessary. He supported the Brazilian view that participation in re-negotiations should be limited to those affected by such a move. Even with a system of direct negotiations, a leakage of information could result in the flooding of markets and some provision to meet this would have to be included in Article 13.

Mr. HAWKINS (United States of America) agreed with the distinction between measures of types (c) and (d). The latter case was clearly one concerning which the Organization should take action. With regard to the former he was inclined to agree with the Brazilian representative that something could be done to make for greater speed and secrecy. The Mexican representative had raised the question of the need for speed as an argument against the intervention of the Organization. The procedure in Article 13 (3) was such as it was so that all Members could be informed of any contemplated restrictive measures. The argument that it would not be necessary to consult the Organization as only a few countries would be concerned in the matter, had been met by the Norwegian representative in his statement on the indirect benefits which accrued to countries with lesser volumes of trade. Despite that argument, it might be preferable to shorten the procedure as suggested by the Brazilian representative. Article 40 did appear to him to provide sufficient flexibility and protection during the period before a decision was reached by the Organization, for action could be taken with reference to a threatened as well as to an actual danger.

Mr. NOVQA (Mexico) emphasized the need for a time-limit to negotiations and supported the Chilean amendment to paragraph 3 (c).

Mr. HEWITT (Australia) was in favour of a draft along the lines of that suggested by the Brazilian representative.

Mr. REISMAN (Canada) accepted the idea that the intervention of the

/Organization could

Organization could be limited in the case of measures of type (c). But the Organization would have to play some part in determining which countries were interested. In his opinion, the Brazilian proposal provided a satisfactory starting point for a discussion on these questions. He agreed with the United States representative with respect to Article 40.

Mr. ARAUJO (Colombia) asked to what extent a Member, which had signed the General Agreement on Tariffs and Trade, could be denied a part in any negotiations. After discussion it was agreed that a Working Party should be set up to stated, as clearly as possible, the issues which had emerged from the general discussion and to consider in particular the proposals of the Brazilian delegation and that it should consist of the representatives of Australia, Brazil, China, Mexico, United Kingdom and the United States of America presided over by the Chairman of the Sub-Committee.

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