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THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE TWENTY-FIRST MEETING (IIIb)

Held at the Capitol, Havana, Cuba,
Tuesday, 30 December 1947 at 4.15 p.m.

Chairman: Mr. L. D. WILGRESS (Canada)

1. ARTICLE 21 - Restrictions to Safeguard the Balance of Payments (First Reading)

Mr. BRONZ (United States) said Article 21 provided the most sweeping escape from the basic obligations of the Charter, because it authorized the imposition of quantitative restrictions, which provide the absolute barrier to the international movement of goods, and because it covered the entire field of trade. Article 21 recognized both the importance to the individual countries of adequate means of protection in the event of financial emergency and the importance to all other countries of protecting their export markets against quantitative restrictions.

Paragraph 1 of Article 21 stated that quantitative restrictions may be imposed in order to safeguard the balance of payments, subject to the provisions of the paragraphs following.

Paragraph 2 (a) set forth the basic financial text for determining whether or not a country is in serious enough financial difficulties as to justify a resort to quantitative restrictions. Paragraph 2 of Article 24 was designed to assure expert evaluation of the monetary and financial factors which would determine the judgments made under this paragraph. Paragraph 2 (b) provided for the gradual relaxation and elimination of quantitative restrictions when the country's financial position was no longer serious enough to justify such restrictions. Unnecessary prolongation of restrictions could be as deleterious as their unnecessary imposition.

Paragraph 3 (a) in effect directed the Organization to give members the benefit of the doubt during the postwar adjustment period. Paragraph 3 (b) was designed to exclude the argument that quantitative restrictions were not "necessary" in a given case because various other

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measures, more particularly a modification of a full employment policy, were available to meet financial difficulties. Thus paragraph 3 (b) recognized the individual sovereignty of the member countries to formulate their domestic programmes. The United States delegation regarded the "notwithstanding" phrase in paragraph 3 (b) (i) as wholly unnecessary. Paragraph 3 (c), however, provided that members must in that formulation pay due regard to the restoration of financial equilibrium on a permanent basis, as well as to the economic employment of productive resources. Sub-paragraph 3 (c) (ii) laid down the token import rule in order to mitigate the damage to fair competition which would result from an absolute stoppage of trade. This was not a strict requirement. The provisions also safeguarded the rights of foreign inventors and authors. Sub-paragraph 3 (c) (iii) placed the additional responsibility on a country using quantitative restrictions to avoid unnecessary damage to the commercial or economic interests of any other country.

Paragraph 4 provided for consultation of the member with the organization concerning the imposition of quantitative restrictions, but contained no requirements for prior approval of the organization. Such consultation had already proved practicable and beneficial. Sub-paragraph 4 (b) also recognized that the use of quantitative restrictions by one nation is the concern of all others. Sub-paragraph 4 (c) provided a procedure for advanced determination by the organization of its views on the applicability of Article 21 in given hypothetical circumstances, should a country wish to have definite assurances for its own advance planning. Sub-paragraph 4 (d) sets forth a complaint procedure, which the Preparatory Committee felt to be an essential ingredient of this Article.

Paragraph 5 makes provision for more general consultations among the countries of the world to meet a general situation of persistent and widespread application of import restriction. The paragraph simply provides the Organization with a mechanism whereby it can seek to reach international agreement on measures to remove the underlying clauses of a world-wide disequilibrium.

Mr. FORTHOMME (Belgium) stated that his delegation recognized that balance of payments difficulties occur, that they are matters of life and death for the countries concerned and that it was not possible to wait for natural forces to remedy a disequilibrium. Nevertheless, they opposed Article 21. It was destructive of the character and contrary to the spirit of the Charter. Every country would want to make use of the provisions of paragraph 3 (b) at some time and might try to evade commitments and

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proclaim their own sovereignty in an effort to solve their domestic economic problems. Paragraph 3 (b) (i) seemed to say that no state need explain the restrictions it applied; it would lead to economic chaos. Elsewhere in the Charter the need for concerted action and co-operation was emphasized and such co-operation was indeed a duty, but paragraph 3 could only lead to the abrogation of the Charter and the sterility of the Organization.

A confusion had arisen concerning the difference between industrial and under-developed countries. The basic error was the assumption that each area in the world faced economic and social problems of a unique and individual character, which demanded unique solution; in fact the problems of each country had certain points of similarity with the problems of other economies and could not be resolved by each state autonomously. Both industrialized and undeveloped countries varied greatly between themselves; the common factor was the aim of productive employment for all resources, human and material. This was the link binding industrial countries and binding all countries, and this the common purpose on which the Organization could be built. It was a question of whether the solution was for each country to take measures independently or for all to seek a solution by concerted action. Autonomous action would create more problems than it solved, and would lead to economic warfare or to world domination by one power. Common and concerted action was worthy of trial and was in conformity with the aims of the United Nations. It was a modest method which did not under-estimate the difficulties. There must, however, be enough boldness to eliminate provisions which would vitiate the Charter.

Mr. CAMPOS (Brazil) stated that his delegation had made certain proposals in Committee II concerning Article 13, but inasmuch as they dealt with quantitative restrictions, it was appropriate to restate them. A sense of balance must be maintained in considering the problem of quantitative restrictions and Brazil's approach to that problem was pragmatic: each case must be judged on its merits for, although quantitative restrictions were a dangerous weapon, they could greatly assist economic planning. It was vital that the judgements of the Organization under Article 13 should be impartial. The attitude of the Organization would depend on a variety of decisions not yet taken by the Conference; the composition of the Executive Board, the voting procedure, the composition of the Tariff Committee and so on.

The Brazilian delegation had proposed a series of amendments to Article 13 as follows: (1) they wished to shorten the period of consultation set forth in paragraph 2 (b) by consulting the principal suppliers; (2) the words "and its long-run effect on the standard of living within the country contemplating /in the measure"

in the measure" should be added to paragraph 2 (c); (3) paragraph 4 (b) should contain a broad and flexible criterion which countries could use in securing permission for quantitative restrictions; (4) they had proposed that a note be appended to Article 13 stating that the Executive Board was the competent authority to take decisions under Article 13 and that there would be a right of appeal from the Executive Board's decisions to the Conference (as set forth in Article 90 paragraph 3; (5) the wording of paragraph 5 (b) should be clarified.

Mr. GUERRA (Cuba) said that Articles 21-24 were fundamental. The Cuban delegation had submitted no amendments, but it reserved the right to defend certain suggestions in committee and sub-committee. Quantitative restrictions were indeed a double-edged weapon but were especially harmful to countries whose economy was dependent upon exports. When exports of such countries were limited by the application of restrictions by others, their imports must of necessity be reduced as a consequence. His country's acceptance of these Articles sprang from their willingness to recognize the facts of the post-war crisis.

The conditions of the important paragraph 2 (a) should not be loosened by deleting the words "imminent" or "serious". Of equal importance were the provisions for progressive relaxation and ultimate elimination of restrictions as conditions of balance of payments improved. At the suggestion of his delegation, paragraph 5 had been added in Geneva to provide for general consultation, as well as bilateral consultation, concerning quantitative restrictions. The word "unreasonably" should be deleted from paragraph 3 (c) (ii).

The role of the International Monetary Fund was the greatest guarantee that the use of quantitative restrictions would be limited as much as possible. It was especially suited to make judgements on the matters referred to in paragraph 2 of Article 24. For the sake of clarity the provisions relating to exchange arrangements should be separated from the rest of Article 24 and written into a new Article.

Mr. TINOCO (Costa Rica) considered Articles 20 and 21 together with Articles 13, 14 and 40 a Bill of Rights for countries which might find it necessary to impose restrictions on imports to further their economic development. Costa Rica had recently accepted the advice of the International Monetary Fund and had introduced "indirect" quantitative restrictions. The central purpose of the Fund was to avoid the necessity for the use of quantitative restrictions, yet the Fund had approved a certain kind of restriction imposed in order to protect the balance of payments of his country.

Most of the amendments to Article 21 showed mistrust of the criteria which the Executive Board might use, but the Board would of necessity give sympathetic consideration to countries meriting aid. If each country had one vote and the right to appeal against the decisions of the Executive Board, the weaker countries would have sufficient safeguards.

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The word "review" should be defined by the Sub-Committee studying paragraph 4 (b) of Article 21 or by the Central Drafting Committee.

Mr. COREA (Ceylon) said the words at the beginning of Paragraph 3 (b) (i) "notwithstanding..." were the core of the Article. If they were deleted as suggested by the Representative of the United States, Paragraph 3 (b) would be entirely subject to Paragraph 2 (a), and the result might be disastrous.

The representative of the United States had also stated that Paragraph 3 did not provide independent basis for the use of quantitative restrictions; they could be used only to meet financial difficulties resulting from the adoption of programmes of industrial development, etc. The Representative of CEYLON had the impression that Article 21 could be applied in order to prevent financial difficulties which would arise from the adoption of these programmes. Restrictions could be adopted, that is to say, in order to meet or prevent financial difficulties which obviously would be inherent in the domestic programme. If that principle were approved, then the Member concerned should not be constrained to wait for the financial difficulties to arise. If the Representative of the United States was correct, then the value of the Article would be reduced to a large extent.

The two points should be discussed and clarified in the Sub-Committee.

The CHAIRMAN summed up the discussion of Article 21. The proposals and amendments would be referred to the Sub-Committee which would be set up at the conclusion of the first reading of Article 24, to consider Articles 21, 23 and 24.

2. ARTICLE 22: Non-Discriminatory Administration of Quantitative Restrictions. (First Reading)

Paragraph 2

(Item 41) Mr. FARINA (Uruguay) said that the amendment proposed by his delegation involved only a change in wording in the first sentence to make it more precise.

(Item 52) Mr. LUNA OLMEDO (Mexico) said that the administration of quantitative restrictions should not show discrimination of any sort. Although he had made no amendment of the first phrase of Paragraph 2 (d), he considered it could be made more precise. Notwithstanding the fact that there seemed to be a certain equality in the criterion by which shares were allocated, the special factors referred to in the Note to Article 20 and in Paragraph 4 might give rise to prejudicial decisions. The Mexican amendment introduced more objective criteria.

The amendment to Paragraph 4 (item 58) was merely a change of drafting.

Mr. AUGENTHALER (Czechoslovakia) thought the Uruguayan proposal might improve the wording of the Paragraph. He doubted, however, if productive

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capacity was a suitable bases for the fixing of quotas, as each country had its natural suppliers. Quotas should be allocated according to the traditional channels of trade.

Mr. FORTHOMME (Belgium) was doubtful about the Uruguayan and Mexican amendments. The latter, in particular, complicated rather than simplified the situation. It did not allow for competition between producers of a given product. Productive capacity was not the same as export capacity.

Mr. COLOCOTRONIS (Greece), referring to the first sentence of the Mexican amendment to Paragraph 2 (d), wondered what would happen if a country which had a substantial interest in supplying another country during a representative period, such as between 1935 and 1939, later ceased to exist, or if such a country had become absorbed in the reconstruction of its devastated industries and could not even fill its previous quota. These questions were not solved by the amendment, nor was the problem of price. Greece had entered into bilateral agreements with certain countries in the pre-war period; he asked what would happen now to the quota of one of these countries if it asked too high a price and whether the Charter would allow for free disposal of such quotas.

The CHAIRMAN stated that if the conditions described were applicable to a particular product, the years immediately before the war might not be regarded as a representative period and therefore a country would be justified in taking a later period as more representative.

(Item 53) It was agreed that the Geneva Draft Note to Paragraph 2, sub-paragraph (d) should be dropped.

(Item 54) Mr. ALAMAN (Turkey) stated that as it stood, sub-paragraph (d) contemplated a situation which prevailed in the past, and this was detrimental to recently established industries. It would be only fair to go beyond previous practice and consider new industries.

Mr. AUGENTHALER (Czechoslovakia) suggested that, although reconstruction would be more practically dealt with in Article 15, the Turkish proposal might be amended to read as follows: "..... those economically backward or war devastated countries....."

Mr. FORTHOMME (Belgium) said the Turkish amendment was very significant. It showed to what extent quantitative restrictions might jeopardize the future development of trade and employment programmes. Moreover, the amendment should be extended to cover all new industries since the industrialized countries had to establish new export industries.

Mr. LEDDY (United States), referring to the Amendment of Turkey, said he would not object to any amendment which would clarify the term "special factors" so that adequate representation in quotas should be given

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to new industries on a competitive basis with others.

Paragraph 3

(Item 55) Mr. ADARKAR (India) said his amendment would introduce some degree of elasticity into the provisions requiring public notice to be given of the quantity or value of the product permitted to be imported under a quota system. There would be practical difficulties in enforcing this provision. If public notice were given, the public could infer how the balance of payments situations was changing from time to time. If quotas had to be changed frequently, this might encourage speculation and have an unsettling effect on trade, and the country might be inclined to fix the quota in the first instance at a low level for purposes of safety. For these reasons a rigid application of this provision should not be insisted upon.

(Item 56) Mr. AUGENTHALER (Czechoslovakia) stated that his comment referred to all the provisions where the Charter requested full publicity as to the quotas among the supplying countries. Full publicity would be possible only on two conditions: first if all those concerned would behave in an exemplary manner, and second if the country involved had only to deal with Members of the ITO.

Mr. LEDDY (United States) believed that the rule of publishing quotas was essential in order to assure the operation and administration of the rules regarding non-discrimination. Those important benefits should not be denied to Members because a non-Member might also profit. Referring to a statement by the Representative of INDIA, he said that it was possible for countries to operate quantitative restrictions without a quota provided full information were given to other members of ITO. The quota system was preferable but it was not always practicable from the administrative point of view.

(Item 57) Mr. ADARKAR (India) stated that the main reason why his Delegation considered it a necessity to propose the amendment to Paragraph 3 (b) was because under Paragraph 2 members could only use a licensing system if quotas were not practicable. It might, however, be necessary to use quotas for administrative reasons, in which event publicity would therefore involve serious practical difficulties.

Mr. TINOCO (Costa Rica), referring to Paragraph 2 (a) and (b), asked if it would not be preferable to add "by countries" after the words "...shall be fixed". The Article did not state how the quotas would be "fixed".

(Item 59) The Draft Geneva Note was referred to the Sub-Committee.

Proposed new Paragraph

(Item 60) Mr. DJEBBARA (Syria) did not understand how any country could establish a quota without taking into account the currency available to it.

Mr. BLUSZTEIN (Poland) endorsed the Amendment of Syria. The Geneva Draft

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was based on the assumption that quantitative restrictions could be administered within the framework of international trade based upon the convertibility of all currency. So long as this was not a fact, the principle of non-discrimination could not be achieved.

Mr. LIMA CAMPOS (Brazil) did not think the amendment necessary.

After some discussion during which the Representative of the United States suggested that the amendments of Syria and Lebanon should properly fall within Article 23, and was opposed by the representatives of Belgium and Greece, it was decided to refer the Amendment to the Sub-Committee to consider Articles 20 and 21, for a decision as to whether or not it should more appropriately fall in the province of the Sub-Committee considering Articles 21, 23 and 24.

Mr. BRIGNOLI (Argentina) said that Articles 22 and 23 were so closely linked that he wished to discuss his amendments to both Articles at the same time.

Argentine was ready to accept a general rule on the non-discriminatory administration of quantitative restrictions as expressed in paragraph 1, of Article 22, but felt that application of the rule must wait on two conditions (1) general equilibrium in international trade and payment and (2) general adhesion of members to the International Monetary Fund. The application of the rule without the fulfilment of those conditions would lead to grave difficulties; countries lacking in the foreign exchange necessary for the working of a multilateral system would have to resort to restrictions and reductions of their imports. It would be proper to establish the principle of non-discrimination in the Charter and to subordinate any rules to the two considerations he had listed.

The CHAIRMAN reviewed the discussion on Article 22. There had been general agreement on paragraph 1 and a difference of views on its applicability. The Committee agreed to refer the proposed amendments to a Sub-Committee to consider Articles 20 and 22.

It was agreed that the terms of reference should be to examine, and submit recommendations to Committee III concerning the proposals on Articles 20 and 22 with authority to consult if considered necessary with Sub-Committee II on Articles 13 and 14. It was agreed that the following countries should be members of the Sub-Committee: Ceylon, Chile, China, Colombia, Egypt, France, Ireland, Mexico, Netherlands, New Zealand, Peru, South Africa, Sweden, United Kingdom and United States.

The meeting rose at 7.30 p.m.
