

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE A (ARTICLES 16, 17, 18, 19)

NOTES OF TWENTY-FOURTH MEETING

Held on Monday, 19 January 1948, 3.00 p.m.

Chairman: Dr. G. A. LAMSVELT (Netherlands)

ARTICLE 18 - NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

Exemption for Certain Internal Quantitative Regulations (Paragraph 4)

1. Item 64 - (Mexico)

The Mexican delegate explained that for constitutional reasons the Mexican Parliament could not be bound retroactively, but only as of the date on which the Charter would come into force. He, therefore, suggested, in lieu of the proposal to delete paragraph 4 (b), deletion only of the dates in sub-paragraph 4 (b) and substitution of language similar to that of Article 14. Meanwhile, the Mexican delegation reserved its position regarding the dates in sub-paragraph 4 (b).

It was agreed that the Working Party should endeavour to find a solution for this problem.

2. The Cuban delegate submitted a new proposal regarding the dates set forth in paragraph 4 (b), as follows:

- (a) the addition, after "1 July 1939 or 10 April 1947", of the words "or at any time between the two dates", or alternatively;
- (b) that a third date be added.

He explained that Cuba wished to reinstate during the present gasoline shortage a mixing regulation, instituted in 1942, requiring the mixture of alcohol and gasoline. This regulation had been rescinded in 1945 and therefore could not be retained under the 10 April 1947 date. Nor did his delegation feel that this emergency situation was adequately covered by Article 43. The Cuban delegate was also concerned that the words "in effect" in paragraph 3 (a) might preclude the proposed mixing regulation, even though domestic alcohol was not stipulated, because in practice the alcohol would be domestic.

/The United States

The United States delegate was of the opinion that

1. Article 43 II (a) would permit the use of mixing regulations with respect to products in short supply;
2. the mixing regulation Cuba proposed to institute would not be precluded by the provisions of Article 18 (3) (a) unless it required that a specific proportion of domestic alcohol be mixed with imported gasoline;
3. the phrase "in effect" had been inserted in paragraph 3 (a) to avoid describing in detail an alternative type of regulation which would have the same effect as that precluded by sub-paragraph 3 (a) (See Notes of the Twenty-third Meeting, E/CONF.2/C.3/A/W.35, page 1) and would not preclude the proposed Cuban mixing regulation.

The Cuban, French and New Zealand delegates were inclined to agree that paragraph 3 (a) would not be applicable in the Cuban situation. The United States delegate felt that both 3 (a) and (b) would apply in the sense that (a) would prevent a mixing regulation requiring a specific proportion of domestic alcohol, and sub-paragraph (b) would prevent protection of the domestic alcohol industry against imported gasoline. So long as the Cuban mixing regulation did not stipulate domestic alcohol, and was not intended to protect the domestic alcohol industry, it would not be precluded by Article 18. The United States delegate did agree, however, with the New Zealand delegate that there was some inconsistency between the language of paragraphs 2 and 3, in that paragraph 2 refers only to "like" products whereas it was not the intention of the drafters that paragraph 3 should be restricted to "like" products. He suggested that the reference to paragraph 2 at the beginning of paragraph 3 might be deleted.

The Cuban delegate accepted the United States delegate's interpretation that the proposed Cuban mixing regulation would not be contrary to Article 18 so long as it did not require the mixture of a specific proportion of domestic alcohol with imported gasoline. If this interpretation was agreed by the Sub-Committee, his delegation would probably submit no amendment, but would meanwhile reserve its position regarding the dates stipulated in sub-paragraph 4 (b), subject to a satisfactory explanation being included in the Sub-Committee's Report. The Cuban delegate, with the support of the Argentinian and Brazilian delegates, did indicate, however, that unless the language of sub-paragraphs 3 (a) and (b) could be clarified satisfactorily, his delegation might prefer to revert to its original proposal to amend sub-paragraph 4 (b).

3. Items 65 (a) (Argentina) and 69 (Brazil)

The Argentinian delegate explained that his delegation had submitted this /amendment because

amendment because it felt there were commodities of greater importance than films which deserved to be exempted from the provisions of paragraph 3 on the grounds of national interest, for example, coal and sulphur in Argentina's case. This was not an emergency problem of short supply, but a continuing one of ensuring sufficient supplies of these commodities to protect the national interest by developing domestic sources. He would not insist on the language of his amendment, provided Argentina's needs were adequately covered, and would support the Brazilian amendment if it were extended to include all products of national importance.

The Brazilian delegate explained that his delegation had proposed exempting basic foodstuffs and fuels from the provisions of paragraph 3 for reasons of national security, not to afford protection. As for the possible alternatives, Article 43 (II) (a) was inadequate; subsidies were not practicable in Brazil; nor would it be practicable to wait for permission under Article 13 to use mixing regulations for protective purposes with respect to these commodities. He believed his delegation's amendment was less susceptible of abuse than the Argentinian amendment since it was more limited in scope, but he would be willing to add a phrase similar to that used in Article 13, i.e., "...if it is established.....that such measure is unlikely to be more restrictive of international trade than any other practicable and reasonable measure permitted under this Charter....."

The French and Norwegian delegates felt that the Argentinian and Brazilian proposals would contravene the provisions of Article 18 (3) and, if adopted, would provide to countries normally exporting industrial products an opportunity to expand their agricultural production by means of protective mixing regulations to the detriment of exporters of primary products.

The French delegate suggested that there would be no point to the Brazilian amendment if the measures contemplated therein were required to be less restrictive than other measures permitted under the Charter. He also regarded emergency cases as fully covered by Article 43.

The Chairman concluded that there was no substantial support in the Sub-Committee for the Argentinian proposal (Item 65) (a) or the Brazilian proposal (Item 69).

4. Item 65 (b) - (Argentina)

There was some support expressed for the proposal to substitute 21 November 1947 for 10 April 1947 in sub-paragraph 4 (b) on the understanding that 1 July 1939 would be retained. It was agreed that the Working Party should examine the feasibility of this proposed substitution.

5. Item 67 - (Sweden)

5. Item 67 - (Sweden)

The Swedish proposal to substitute the word "system" for the words "measures" and "measure" in sub-paragraph 4 (b), was accepted in principle and referred to the Working Group.

-----